



FORM 5A

Case: S ECI 2022 04261

Filed on: 08/10/2024 04:02 PM

Rule 5.02(1)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDING LIST**

No. S ECI 2022 04261

B E T W E E N

FNH UNITED PTY LTD (ACN 639 802 798) and others according to the schedule

Plaintiffs

-and-

**UNITED PETROLEUM FRANCHISE PTY LTD
(ACN 127 764 989) and another according to the schedule**

Defendants

AMENDED WRIT

Filed pursuant to leave granted by Nichols J on 4 October 2024

Date of Document:	23 September 2024	Solicitors Code:	
Filed on behalf of:	Plaintiffs	DX:	
Prepared by:	Levitt Robinson Solicitors	Telephone:	(02) 9286 3133
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Filed by their Victorian Agents: _____

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Level 1, 530 Little Collins Street
MELBOURNE VIC 3000~~

TO THE DEFENDANTS

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

***THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED *[insert date]*

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

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COMMERCIAL COURT
GROUP PROCEEDING LIST**

No. S ECI 2022 04261

B E T W E E N

FNH UNITED PTY LTD (ACN 639 802 798) and others according to the schedule

Plaintiffs

-and-

**UNITED PETROLEUM FRANCHISE PTY LTD
(ACN 127 764 989) and another according to the schedule**

Defendants

AMENDED STATEMENT OF CLAIM

Filed pursuant to leave granted by Nichols J on 26 June 2024

Date of Document:	23 September 2024	Solicitors Code:	
Filed on behalf of:	Plaintiffs	DX:	
Prepared by:		Telephone:	(02) 9286 3133
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A. The Parties

- 1 The First Plaintiff, FNH United Pty Ltd (ACN 639 802 798) (**FNH**) is and was at all material times a company incorporated under the *Corporations Act 2001* (Cth) (**Act**) and able to sue in its corporate name.
- 2 The Second Plaintiff, Fahim Istanikzai (**Mr Istanikzai**), is and was at all material times the director of FNH, a guarantor of FNH’s obligations under the Franchise Agreement with the First Defendant, and a natural person capable of suing in his own name.
- 3 The Third Plaintiff, Jigar Patel (**Mr Patel**),
 - (a) is and was at all material times a natural person capable of suing in his own name; and
 - (b) a trustee of the JJ Unit Trust.
- 4 The Fourth Plaintiff, Jaydeep Bhatti (**Mr Bhatti**),
 - (a) is and was at all material times a natural person capable of suing in his own name; and
 - (b) a trustee of the JJ Unit Trust.

4A The Fifth Plaintiff, Yug Sharma Pty Ltd (ACN 640 132 190) (Yug Sharma) is and was at all material times a company incorporated under the Act and able to sue in its corporate name.

5 The First Defendant, United Petroleum Franchise Pty Ltd (ACN 127 764 989) (**UPF United Petroleum**) :

- (a) was incorporated in Victoria on 28 September 2007;
- (b) is and was at all material times a proprietary company incorporated under the Act able to sue and be sued in its corporate name;
- (c) was, at all material times, a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
- (d) at all material times, had as its directors Eddie Hirsch and Avi Silver, who were appointed to those positions on 28 September 2007; and
- (e) as at the date of filing this Amended Statement of Claim, has 12 ordinary shares on issue, held as follows:
 - (i) 6 shares held by Agtan Pty Ltd (ACN 007 410 077) (**Agtan**) a company of which Avi Silver is the sole director, secretary, and shareholder; and
 - (ii) 6 shares held by Pribay Pty Ltd (ACN 007 410 040) (**Pribay**) a company of which Eddie Hirsch is the sole director, secretary, and shareholder.

6 The Second Defendant, Avi Silver, is and was at all material times:

- (a) a director of UPF and UP United Petroleum; and
- (b) a natural person capable of being sued.

6A The Third Defendant, United Petroleum Pty Ltd (UP) (ACN 085 779 255):

- (a) was incorporated in South Australia on 7 January 1999;
- (b) is and was at all material times a proprietary company incorporated under the Act able to sue and be sued in its corporate name;
- (c) was, at all material times, a corporation within the meaning of the CCA;
- (d) at all material times, had as its directors Eddie Hirsch and Avi Silver, who were appointed to those positions on 7 January 1999;
- (e) at the date of filing this Amended Statement of Claim, had two ordinary shares on issue, held by United Petroleum Australia Pty Ltd, a company:
 - (i) whose directors are Eddie Hirsch and Avi Silver; and

(ii) whose shareholders are:

- (A) Apson Pty Ltd (ACN 075 196 084), a company of which Eddie Hirsch is the sole director and shareholder; and
- (B) Kinlee Pty Ltd (ACN 075 196 093), a company of which Avi Silver is the sole director and shareholder.

7 UPF and UP United Petroleum are is part of a group of companies trading under the United Petroleum brand and trademarks (**United Group**).

Particulars

Entities within the United Group of which the Plaintiffs are aware are:

- (a) United Card Services Pty. Ltd
- (b) United Dalby Bio-Refinery Pty. Ltd
- (c) United Ethanol Refinery Pty. Ltd
- (d) United Petroleum Pty Ltd
- (e) United Petroleum (WA) Pty. Ltd
- (f) United Petroleum (NT) Pty. Ltd
- (g) United Petroleum Franchise Pty. Ltd
- (h) United Petroleum Distributors Pty. Ltd
- (i) United Petroleum Australia Pty Ltd
- (j) United Petroleum Properties Pty Ltd
- (k) United Petroleum Transport Pty Ltd
- (l) United Petroleum No. 2 Pty Ltd
- (m) United Pipeline Pty. Ltd
- (n) United Terminals Pty. Ltd
- (o) United Terminals NSW Pty. Ltd
- (p) United Terminals NT Pty. Ltd
- (q) United Terminals Queensland Pty Ltd
- (r) United Terminal Bell Bay Pty. Ltd

7A Avi Silver is a director of every company in the United Group pleaded at paragraph 7 above.

8 Within the United Group, UPF ~~United Petroleum~~ is an operating entity that operates service stations via a network of licensed businesses operated by franchisees while UP is the contracting party for Commission Agents (United Network).

B. Group Members

9 This is a representative proceeding brought pursuant to Part IVA of the *Supreme Court Act 1986* (Vic) (**SCA**) on behalf of the Plaintiffs and on behalf of all persons who:

- (a) at any time from 19 October 2016 and 20 October 2022 (**Franchisee Relevant Period**) were or commenced to be a franchisee in the United Network pursuant to a standard form franchise agreement (**Franchise Agreement**) with UPF ~~United Petroleum~~ (each person meeting this description being a **Franchisee**); and/or
- (b) at any time during the Franchisee Relevant Period were or commenced to be a guarantor of a Franchisee's obligations under a Franchise Agreement with UPF ~~United Petroleum~~ (each person meeting this description being, as the context requires, a **Guarantor of a Franchisee**); and/or
- (c) at any time from 23 September 2018 to 23 September 2024 (**Commission Agent Relevant Period**) were or commenced to be a commission agent in the United Network pursuant to a standard form agreement (**Commission Agency Agreement**) with UP (each person meeting this description being a **Commission Agent**) and/or
- (d) at any time during the Commission Agent Relevant Period were or commenced to be a guarantor of a Commission Agent's obligations under a Commission Agency Agreement with UP (each person meeting this description also being, as the context requires, a **Guarantor of a Commission Agent**).

10 The Franchisees, Commission Agents and the Guarantors of those Franchisees and Commission Agents are the **Group Members** in this representative proceeding.

11 As at the commencement of this proceeding, seven or more Group Members have claims against the Defendants within the meaning of section 33C of the SCA.

C. The Franchise Agreement, ~~Disclosure Document~~, and Franchise Operations Manual

12 During the Franchisee Relevant Period, UPF ~~United Petroleum~~ offered prospective franchisees the right to operate a franchised service station business in the United Network pursuant to a Franchise Agreement.

Particulars

- (a) *An example of the standard form Franchise Agreement is the agreement between FNH, Mr Istankzai (as guarantor), and UPF United Petroleum executed on or about 17 April 2020.*
- (b) *An example of the standard form Franchise Agreement is the agreement between Mr Patel and Mr Bhatti in their capacities as trustees of the JJ Unit Trust, Mr Patel and Mr Bhatti in their personal capacities (as guarantors), and UPF United Petroleum executed on or about 29 May 2018.*
- (c) *References to clauses of the standard form Franchise Agreement take their clause numbering from the agreement between Mr Patel and Mr Bhatti in their capacities as trustees of the JJ Unit Trust and UPF United Petroleum.*
- (d) *Particulars of the standard form Franchise Agreements supplied to Group Members will be provided following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

12A The Franchise Agreement was prepared by UPF before any discussion occurred between UPF and a prospective Franchisee or Guarantor.

12B A Franchisee and Guarantor were, in effect, required to either accept or reject the terms of the Franchise Agreement in the form in which they were presented by UPF.

12C Prior to entry into a Franchise Agreement, Franchisees and Guarantors were not offered an opportunity to negotiate the terms of the Franchise Agreement by UPF.

12D The terms of the Franchise Agreement did not take into account the specific characteristics of a Franchisee or a Guarantor.

12E By reason of the matters pleaded at paragraphs 12 – 12D above, the Franchise Agreement was a standard form contract within the meaning of section 27 of the ACL (as pleaded at paragraph 163 below).

D. Commission Agency Agreement

12G During the Commission Agent Relevant Period, UP offered Commission Agents the right to operate a service station business in the United Network pursuant to a standard form Commission Agency Agreement.

Particulars

Particulars of the standard form Commission Agency Agreements supplied to Group Members will be provided following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

- 12H The Commission Agency Agreement was prepared by UP before any discussion occurred between UP and a prospective Commission Agent and Guarantor.
- 12I A Commission Agent and Guarantor were, in effect, required to either accept or reject the terms of the Commission Agency Agreement in the form in which they were presented by UP.
- 12J Prior to entry into a Commission Agency Agreement, Commission Agents and Guarantors were not offered an opportunity to negotiate the terms of the Commission Agency Agreement by UP.
- 12K The terms of the Commission Agency Agreement did not take into account the specific characteristics of Commission Agents and Guarantors.
- 12L By reason of the matters pleaded at paragraphs 12G – 12K above, the Commission Agency Agreement was a standard form contract within the meaning of section 27 of the ACL (as pleaded at paragraph 163 below).

E. Liability of Guarantors – Franchise Agreement

- 12M Pursuant to clause 36.2 of the Franchise Agreement, a Guarantor of a Franchise Agreement guaranteed to UPF prompt performance of all of the obligations of the Franchisee, any director of the Franchisee and the Nominated Operator (as defined in the Franchise Agreement) contained or implied in the Franchise Agreement for the Term (as defined in the Franchise Agreement) and any Renewal Term (as defined in the Franchise Agreement), and if the obligation was to pay money, UPF may recover the money from the Guarantor as a liquidated debt.

Particulars

'Nominated Operator' is defined in clause 1.1 to mean the nominated operator of the Franchised Business identified in Item 18 of the Schedule.

'Term' is defined in clause 1.1 to mean the initial term of the Franchise specified in Item 7 of the Schedule and includes, where appropriate, any renewal or extension or holding over except to the extent terminated earlier in accordance with this Agreement.

'Renewal Term' is defined in clause 1.1 to mean the periods, if any, specified in Item 20 of the Schedule.

- 12N Pursuant to clause 36.3 of the Franchise Agreement, a Guarantor indemnifies and must keep UPF indemnified against any Claim (as defined in the Franchise Agreement) resulting from:
- (a) a failure to perform an obligation under the Franchise Agreement by the Franchisee, any director of the Franchisee, the Nominated Operator, any employee, agent or contractor of the Franchisee or any other person acting on the Franchisee's behalf; or
 - (b) the Franchise Agreement being or becoming unenforceable against the Franchisee in respect of the Term (as defined in the Franchise Agreement), and any Renewal Term (as defined in the Franchise Agreement).

Particulars

'Claim' is defined in clause 1.1 to mean any claims, demands, losses, liabilities, costs and expenses.

'Renewal Term' is defined in clause 1.1 to mean the periods, if any, specified in Item 20 of the Schedule.

12O Pursuant to clause 36.4(e) of the Franchise Agreement, a Guarantor's liability under clauses 36.2 and 36.3 is not affected by the termination of the Franchise Agreement.

12P Pursuant to clause 36.4(f) of the Franchise Agreement, a Guarantor's liability under clauses 36.2 and 36.3 is not affected by the fact that the Franchise Agreement is wholly or partially void, voidable or unenforceable.

12Q Pursuant to clause 36.5 of the Franchise Agreement:

- (a) if any of a Franchisee's obligations are unenforceable against the Franchisee;
- (b) if any obligation imposed on a director of the Franchisee is unenforceable against that director; or
- (c) if any of the Nominated Operator's obligations are unenforceable against the Nominated Operator,

then clause 36.5 of the Franchise Agreement is to operate as a separate indemnity and a Guarantor indemnifies and must keep UPF indemnified against all Claims (as defined in the Franchise Agreement) resulting from UPF's inability to enforce performance of those obligations. A Guarantor must pay UPF the amount of the Claim resulting from the unenforceability.

Particulars

'Claim' is defined in clause 1.1 to mean any claims, demands, losses, liabilities, costs and expenses.

F. Liability of Guarantors – Commission Agency Agreement

12R Pursuant to clauses 21.1 and 21.2, and clause 1 of Annexure "A" of the Commission Agency Agreement, a Guarantor of a Commission Agency Agreement guaranteed to UP the due performance, observance and fulfilment by the Commission Agent of all the terms and conditions contained in or implied by the Commission Agency Agreement on the part of the Commission Agent to be performed, observed and fulfilled.

12S Pursuant to clauses 21.1 and 21.2, and clause 2 of Annexure "A" of the Commission Agency Agreement, a Guarantor of a Commission Agency Agreement indemnifies and agrees to keep indemnified UP's officers and employees against all loss, damage, costs and expenses suffered or incurred by UP as a result of or in connection with any failure by the Commission Agent to pay any moneys or to perform, observe or fulfil any of the terms and conditions contained in or implied by the Commission Agency Agreement.

12T Pursuant to clauses 21.1 and 21.2, and clause 3 of Annexure "A" of the Commission Agency Agreement, a Guarantor of a Commission Agency Agreement acknowledges that the liability of the Guarantor will remain in full force and effect notwithstanding, *inter alia*, the availability to the Commission Agent of any defence at law or in equity in respect of liability under the Commission Agency Agreement and the Guarantor waives all such defences if any.

G. Signature of Avi Silver

12U It was Avi Silver's usual practice to execute each Franchise Agreement on behalf of UPF, along with Mr Hirsh.

12V It was Avi Silver's usual practice to execute each Commission Agency Agreement on behalf of UP, along with Mr Hirsch.

H. Franchise Agreement Documents

13 Prior to or at the time of a Franchisee entering into a Franchise Agreement, ~~each~~ some prospective Franchisees and guarantors ~~was, or was supposed to be, were~~ provided with a copy of a document titled United Petroleum Franchise Pty Ltd Disclosure Document (**Disclosure Document**).

Particulars

- (a) *On or about 26 March 2020, FNH and Mr Istanikzai were ~~was~~ provided with a Disclosure Document.*
- (b) *Mr Patel and Mr Bhatti were not provided with a Disclosure Document.*
- (c) *The number of prospective Franchisees provided with Disclosure Documents are not currently within the Plaintiffs' knowledge.*
- (d) *Particulars of the Disclosure Documents supplied to Group Members will be provided following discovery, and following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

14 At all material times throughout the Franchisee Relevant Period, UPF maintained the time Franchisee entering into a Franchise Agreement, each prospective Franchisee was, or was supposed to be, provided with a copy of a document titled Franchise Operations Manual (Operations Manual).

Particulars

Clause 11.2 of the Franchise Agreement provided that UPF must, at its cost, loan or make available to a Franchisee the Franchise Operations Manual.

- ~~(a) FNH was not provided with an Operations Manual prior to entering its Franchise Agreement~~
- ~~(b) Mr Patel and Mr Bhatti were not provided with an Operations Manual~~
- ~~(c) Particulars of the Operations Manuals supplied to Group Members will be provided following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.~~

14A Pursuant to clause 20.3 of the Franchise Agreement:

- (a) a Franchisee must operate the Franchised Business (as that term is defined in the Franchise Agreement) strictly in accordance with the provisions of the Franchise Operations Manual (as varied from time to time); and
- (b) the Franchise Operations Manual was to be treated as part of the Franchise Agreement.

I. History of the Pie Face Franchise

15 On or about 3 May 1999, A.C.N. 087 384 736 Pty Ltd, then known as “Pie Face Pty Ltd” (**Original Pie Face**) was incorporated in New South Wales.

16 On or about 18 October 2004, A.C.N 111 409 860 Limited (**Pie Face Holdings**) was incorporated in New South Wales.

17 Original Pie Face operated a network of retail franchises that predominantly retailed pies and other bakery products (**Pie Face Franchise**) under the “Pie Face” brand and trademarks (**Pie Face Intellectual Property**).

Particulars

Particulars of the signs, names, and marks comprising the Pie Face Intellectual Property will be given in evidence and following discovery.

18 Pie Face Holdings had legal title to the Pie Face Intellectual Property.

19 On or about 23 February 2012, Original Pie Face was served with a Creditor’s Statutory Demand for Payment of Debt by the New South Wales Chief Commissioner of State Revenue.

20 On or about 5 April 2012, an application was filed with the Supreme Court of New South Wales for a winding-up order against Original Pie Face by the New South Wales Chief Commissioner of State Revenue.

Properties

Notification of court action relating to winding-up filed 5 April 2012, being ASIC document no. 028002054.

21 On or about 18 November 2014, Steven John Sherman and Peter James Gothard (**Receivers**) were appointed as Joint Receivers over certain property of Pie Face Holdings by its first ranking secured creditor, Macquarie Capital Group Pty Ltd.

22 On or about 21 November 2014, Roderick Mackay Sutherland and Sule Arnautovic (**Administrators**) were appointed as Administrators of Original Pie Face under Part 5.3A of the Act.

Particulars

External Administration - Appointment of an external administrator filed 24 November 2014, being ASIC Document No. 7E6544065.

23 On or about 3 December 2014 there was a concurrent meeting of creditors of Original Pie Face, Pie Face Holdings, and Pie Face Franchising Pty Ltd (**Pie Face Group**).

Particulars

Minutes of meeting dated 3 December 2014, being ASIC Document No.7E6606849

- 24 In the minutes of the meeting held on 3 December 2014, the Administrators advised creditors of Original Pie Face that:
- (a) they were continuing to trade the business of the Pie Face Group;
 - (b) as a result of a cash-flow analysis of the business of the Pie Face Group, they expected to generate weekly revenues of approximately \$250,000 per week; and
 - (c) the current operational costs of the business of the Pie Face Group was \$400,000 per week, a situation the Administrators described as a “cash-flow crisis”.
- 24A On or about 18 December 2014, in a report to creditors under section 439A of the Corporations Act 2001 (Cth), it was reported by the Administrators, and it was the fact that, Original Pie Face had continually operated at a loss and was reliant on the other companies in the Pie Face Group to fund its working capital requirements.

Particulars

Report to creditors under s 439A of the Corporations Act 2001 (Cth) dated 18 December 2014.

- 25 On or about 30 December 2014, a meeting of creditors of Original Pie Face was held to consider, amount other things, the execution of a Deed of Company Arrangement.

Particulars

Meeting of creditors of Original Pie Face dated 30 December 2014, being ASIC document number 7E6651351.

- 26 On or about 30 December 2014, at the meeting of creditors of Original Pie Face, it was resolved that Original Pie Face be required to execute a Deed of Company Arrangement.
- 27 On or about 30 December 2014, Original Pie Face executed a Deed of Company Arrangement appointing the Administrators, Roderick Mackay Sutherland and Sule Arnautovic to Original Pie Face under the Deed of Company Arrangement (**DOCA**).

Particulars

Deed of Company Arrangement dated 30 December 2014, being ASIC Document No. 7E6640338.

- 28 The DOCA provided a projected dividend to unsecured creditors of Original Pie Face of between 14 and 19 cents in the dollar.

- 29 On or about 29 January 2015, the Administrators lodged a Presentation of accounts and statement with ASIC for the period from 21 November 2014 to 30 December 2014.

Particulars

ASIC Document No. 7E6685042.

- 30 On or about 29 July 2015, the Administrators lodged a Presentation of accounts and statement with ASIC for the period from 30 December 2014 to 29 June 2015.

Particulars

ASIC Document No. 7E7173515.

- 31 On or about 14 January 2016, the Administrators lodged a Presentation of accounts and statement with ASIC for the period from 30 June 2015 to 29 December 2015.

Particulars

ASIC Document No. 7E7615880.

- 32 On or about 27 January 2016, Roderick Mackay Sutherland resigned as Administrator of Original Pie Face.
- 33 On or about 28 January 2016, Sule Arnautovic lodged a Presentation of accounts and statement with ASIC for the period from 30 December 2015 to 27 January 2016.

Particulars

ASIC Document No. 028786635.

- 34 On or about 28 January 2016, Sule Arnautovic issued a Formal Report and Notice of Meeting of Creditors pursuant to s 445(f) of the Act to creditors of Original Pie Face.
- 35 On or about 12 February 2016, there was a meeting of the creditors of Original Pie Face.

Particulars

Minutes of a meeting of creditors of Pie Face Pty Ltd (subject to Deed of Company Arrangement) held on 12 February 2016 and lodged on 24 February 2016, bearing ASIC Document No. 7E7725940.

- 36 At the meeting held on 12 February 2016, the Sule Arnautovic advised:

- (a) of a proposed variation to the DOCA to provide an altered timetable for the Deed Contributions to be made by Original Pie Face under the DOCA, whereby Original Pie Face would not make further Deed Contributions until 1 August 2016;
- (b) that the proposed variation will yield the best return to creditors when compared to a liquidation; and
- (c) that if the Company were to be eventually wound up, there would be no financial return to priority employees (save for the Fair Entitlements Guarantee) or ordinary unsecured creditors, even after providing for potential actions that may be available to a liquidator.

37 At the meeting held on 12 February 2016, the resolution to amend the DOCA was carried.

38 On or about 9 March 2016, the DOCA was varied.

Particulars

Deed of Variation of Deed of Company Arrangement dated 9 March 2016 being ASIC Document No. 7E7776643.

39 On or about 4 July 2016, Sule Arnautovic lodged a Presentation of accounts and statement with ASIC for the period from 30 December 2015 to 29 June 2016.

Particulars

ASIC Document No. 7E8116622.

40 On or about 31 October 2016, Christopher John Palmer of O'Brien Palmer was appointed as a Receiver and Manager of Original Pie Face by the principal secured creditor of Original Pie Face.

41 On or about 10 November 2016, Sule Arnautovic issued a Formal Report and Notice of Meeting of Creditors to creditors of Original Pie Face pursuant to section 445F of the Act.

42 On or about 18 November 2016, there was a meeting of creditors of Original Pie Face, at which the creditors passed resolutions:

- (a) terminating the DOCA; and
- (b) resolving that Original Pie Face be wound up and that Sule Arnautovic be appointed as Liquidator of Original Pie Face.

Particulars

Minutes of a meeting of creditors of Original Pie Face held on 18 November 2016, being ASIC Document No. 7E8582694.

- 43 The minutes of the meeting record that, at the meeting on or about 18 November 2016, Sule Arnautovic advised the meeting, *inter alia* of:
- (a) reasons for the failure of the DOCA;
 - (b) appointment of the Receiver and Manager to Original Pie Face;
 - (c) the nature and amount of the debt of Original Pie Face to the secured creditor and the reason for the appointment of the Receiver and Manager; and
 - (d) potential recoveries available to the Liquidator, including but not limited to preference claims against unsecured creditors and insolvent trading claims against the director and the ultimate holding company of Original Pie Face.
- 44 On or about 18 November 2016, the DOCA was terminated and Sule Arnautovic was appointed as Liquidator of Original Pie Face under a Creditors' Voluntary Winding Up.

Particulars

- (a) *Notice of termination of deed of company arrangement dated 23 November 2016, being ASIC Document No. 7E8551604.*
- (b) *Notice of special resolution to wind up a company dated 23 November 2016, being ASIC Document No. 7E8551625.*

- 45 On or about 28 November 2016, Liam Thomas Bailey was appointed as a Receiver and Manager to Original Pie Face.
- 46 On or about 16 December 2016, Sule Arnautovic lodged a Presentation of accounts and statement for Original Pie Face for the period from 30 June 2016 to 18 November 2016.

Particulars

ASIC Document No. 7E8628987.

- 47 On or about 22 December 2016, Christopher John Palmer lodged a Report as to affairs for Original Pie Face for the period up to 31 October 2016 (**December 2016 Report**).

Particulars

ASIC Document No. 7E8650086.

48 The December 2016 Report estimated the unsecured creditors of Original Pie Face to be owed \$51,049,604.23.

49 On or about 13 April 2017 (**Acquisition Date**), a member of the United Group acquired the Pie Face Franchise and the Pie Face Intellectual Property.

Particulars

Particulars of the acquisition of the Pie Face Franchise and the Pie Face Intellectual Property will be given in evidence and following discovery.

49A On behalf of UP, UPF, and the United Group, Avi Silver was the person with primary responsibility for negotiating the acquisition of the Pie Face Franchise and the Pie Face Intellectual Property.

Particulars

Avi Silver, along with Eddie Hirsch, was one of the two directors of all companies in the United Group as pleaded at paragraph 7A above, and as such it can be inferred that the acquisition of the Pie Face Franchise was with his approval.

As pleaded at paragraph 52F below, with respect to the allocation of responsibility at board level of the companies within the United Group, including UPF and UP, Avi Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network.

50 Following the acquisition of the Pie Face Franchise and the Pie Face Intellectual Property, UPF and/or UP ~~United Petroleum~~ began installing the Pie Face Franchise into sites throughout the United Network run by Franchisees and Commission Agents, including the branding, logos, and trade marks forming part of the Pie Face Intellectual Property, and installing freezers, ovens, and stock cabinets designed for Pie Face stock (each such site a **Pie Face Site**).

Particulars

(a) *As UPF was the contractual counterparty for Franchisees, it can be inferred that the installation of the Pie Face Franchise into Franchisee sites in the United Network was with the knowledge and consent of UPF.*

(b) *As UP was the contractual counterparty for Commission Agents, it can be inferred that the installation of the Pie Face Franchise into Commission Agent sites in the United Network was with the knowledge and consent of UP.*

- (c) *Prior to FNH taking possession of the Cranbourne South Site on or about 17 April 2020, UPF and/or UP ~~United Petroleum~~ installed a the Pie Face Franchise by installing branding, logos, signs, and trademarks forming part of the Pie Face Intellectual Property in the Cranbourne South Site, and fitting out the site with freezers, ovens, and stock cabinets designed for Pie Face stock, making the Cranbourne South Site a Pie Face Site.*
- (d) *The installation of the Pie Face Franchise by UPF and/or UP ~~fit-out~~ for the Wallan Site operated by Mr Patel and Mr Bhatti occurred in or about March 2020, making the Wallan Site a Pie Face Site.*
- (ee) *Prior to Yug Sharma taking possession of the Heathcote Site (as defined in paragraph 65C below), UPF and/or UP installed the Pie Face Franchise by installing branding, logos, signs, and trademarks forming part of the Pie Face Intellectual Property in the Heathcote Site, and fitting out the site with freezers, ovens, and stock cabinets designed for Pie Face stock, making the Heathcote Site a Pie Face Site.*
- (e) *Particulars of the installation of Pie Face Franchises ~~fit-out~~ to sites operated by Franchisees and Commission Agents will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

50A Following the introduction of a Pie Face Franchise into a site in the United Network, the floor space available to a Franchisee or Commission Agent to retail convenience store products decreased due to the floor space required for the Pie Face Franchise.

50B As a result of the decrease in floor space available to Franchisees and Commission Agents to retail convenience store products as pleaded at paragraph 50A above, the revenue derived by Franchisees and Commission Agents from retailing convenience store products decreased.

51 UPF and/or UP ~~United Petroleum~~ did not seek the consent or agreement of Franchisees and Commission Agents to install the Pie Face Franchise into sites in the United Network that then became Pie Face Sites.

52 Franchisees and Commission Agents were not offered a choice by UPF and/or UP ~~United Petroleum~~ as to whether or not they would operate a Pie Face Site.

J. Management Structure of UPF, UP, and the United Group

52A Within the United Group, Franchisees and Commission Agents reported to, and took directions from, managers of a particular area known as 'Area Managers'.

52B United Group Area Managers reported to, and took directions from, managers of a state area known as 'State Managers'.

52C United Group State Managers reported to, and took directions from, executive-level management of the United Group, which included the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer (together and including other members of the executive-level management of the United Group, the **United Petroleum Executive**).

Particulars

Members of the United Petroleum Executive of which the Plaintiffs are currently aware were Gary Brinkworth, Chief Executive Officer, David Szymczak, Chief Operating Officer of the United Group, George Svinos, Group Chief Financial Officer, and Bruce Federoff, Pie Face Chief Executive Officer.

52D The United Petroleum Executive reported to, and took direction from, Avi Silver and Eddie Hirsch, the directors of UPF and UP.

52E With respect to the allocation of responsibility at board level of the companies within the United Group, Eddie Hirsh predominantly gave instructions and directions to the United Petroleum Executive with respect to sale of fuel products.

Particulars

Particulars of the instructions and directions given to the United Petroleum Executive by Eddie Hirsh with respect to the sale of fuel products will be given in evidence.

52F With respect to the allocation of responsibility at board level of the companies within the United Group, including UPF and UP, Avi Silver predominantly gave instructions and directions to the United Petroleum Executive, and Area and State Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network.

Particulars

The instructions and directions were mostly verbal, and occurred at meetings between Avi Silver and members of the United Petroleum Executive at the

headquarters of the United Group in Hawthorn, Victoria.

The United Petroleum executives to whom Avi Silver gave instructions and directions with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network, were David Szymczak, Chief Operating Officer of the United Group, Bruce Federoff, Pie Face Chief Executive Officer, and Gary Brinkworth, Chief Executive Officer.

The meetings were both formal meetings involving a number of members of the United Petroleum Executive, as well as informal one-on-one meetings between a member of the United Petroleum Executive, or a Manager employed by UPF or UP on one hand, and Avi Silver on the other.

52G Within the United Group, the scheduled rollout of the Pie Face Franchise into the United Network was listed in a document titled "Proposed Schedule for Pie Face Roll Out", or words to similar effect (**Pie Face Rollout Schedule**), and which was stored on the Shared Drive (as pleaded at paragraph 66L below).

52H At all material times, the Pie Face Rollout Schedule was:

- (a) accessible by Avi Silver, being on the Shared Drive;
- (b) amended by Avi Silver prior to being actioned with respect to the installation of the Pie Face Franchise into any particular store or stores in the United Network; and
- (c) approved by Avi Silver prior to being actioned with respect to the installation of the Pie Face Franchise into any particular store or stores in the United Network.

Particulars

The approvals of the Pie Face Rollout Schedule were verbal, and occurred at meetings between Avi Silver and members of the United Petroleum Executive at the headquarters of the United Group in Hawthorn, Victoria.

The United Petroleum executives to whom Avi Silver gave the approvals were David Szymczak, Chief Operating Officer of the United Group, Bruce Federoff, Pie Face Chief Executive Officer, and Gary Brinkworth, Chief Executive Officer.

52I Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, members of the United Petroleum Executive had at times scheduled, and at times impromptu meetings with Avi Silver (**Leadership Team Meetings**).

Particulars

Members of the United Petroleum Executive of which the Plaintiffs are currently aware were Gary Brinkworth, Chief Executive Officer, David Szymczak, Chief Operating Officer, George Svinos, Group Chief Financial Officer, and Bruce Federoff, Pie Face Chief Executive Officer.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

52J Regular attendees at Leadership Team Meetings included:

- (a) Avi Silver;
- (b) Gary Brinkworth, the Chief Executive Officer of the United Group;
- (c) George Svinos, the Chief Financial Officer of the United Group;
- (d) David Szymczak, the Chief Operating Officer of the United Group; and
- (e) other senior employees within the United Group, such as a General Manager.

Particulars

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings were usually held at least monthly, occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

52K On occasion, a Leadership Team Meeting included a Franchisee or Commission Agent either representing their own interests, or those of a number of Franchisees or Commission Agents.

Particulars

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

52L Throughout the Franchisee Relevant Period and Commission Agent Relevant Period,

the United Group General Manager – Retail held regular meetings by phone with State Managers (**State Manager Meetings**).

Particulars

Further particulars of State Manager Meetings, including their usual times, locations, and attendees will be given in evidence.

K. Amounts paid by the Lead Plaintiffs – FNH

53 On or about 17 April 2020, FNH entered into a Franchise Agreement with UPF United Petroleum (**FNH Franchise Agreement**).

53A At the time it entered into the FNH Franchise Agreement, FNH employed fewer than 20 persons.

Particulars

At the time it entered into the FNH Franchise Agreement, FNH employed only one person, its director Mr Istanikzai.

54 FNH paid the following amounts ~~on the following dates~~ to UPF United Petroleum in consideration for entering into the FNH Franchise Agreement:

- (a) \$159,500 as an initial Franchise Fee, including GST;
 - (b) \$6,600 as a training fee, including GST; and
 - (c) \$50,000 as a bank guarantee with the Commonwealth Bank of Australia in favour of UPF United Petroleum on or about 15 April 2020;
- (together, the **FNH Upfront Costs**).

55 FNH also paid \$300,000 in goodwill and \$74,902.95 for store stock to the previous franchisee, being K P Groups Pty Ltd (**the FNH Takeover Costs**).

Particulars

K P Groups Pty Ltd was paid the FNH Takeover Costs on or about 17 April 2020.

56 Pursuant to the FNH Franchise Agreement, FNH acquired the right to operate a fuel reselling business at 1-3 Cameron Street, Cranbourne Victoria 3977 trading as United Petroleum Cranbourne South (the **Cranbourne South Site**) for an initial term of 1 year, 4 months and 16 days.

Particulars

Item 9 of Schedule 1 of the FNH Franchise Agreement.

57 Pursuant to the FNH Franchise Agreement, Mr Istanikzai is and was at all material times a guarantor of FNH's obligations under the FNH Franchise Agreement.

Particulars

Clause 35.2 of the FNH Franchise Agreement.

58 Throughout the duration of the FNH Franchise Agreement, FNH incurred and paid the following fees to UPF United Petroleum:

- (a) the Franchise Service Fee;
 - (b) the Equipment Support Fee;
 - (c) the Software Support Fee; and
 - (d) the Insurance Fee,
- (together, the **FNH Ongoing Costs**).

Particulars

- (a) *The Franchise Service Fee is defined in Item 11 of the Schedule to the FNH Franchise Agreement to be \$536.68 per day (inclusive of GST), which amount can be increased in accordance with clause 17.8 of the FNH Franchise Agreement.*
- (b) *The Equipment Support Fee is defined in Item 15 of the Schedule to the FNH Franchise Agreement to be \$35 (inclusive of GST) per day.*
- (c) *The Software Support Fee is defined in Item 16 of the Schedule to the FNH Franchise Agreement to be \$8.73 (inclusive of GST) per day.*
- (d) *The Insurance Fee is defined in Item 24(a) of the FNH Franchise Agreement to be \$3.30 (inclusive of GST) per day.*
- (e) *Further particulars of the amounts comprising the FNH Ongoing Costs throughout the term of the FNH Franchise Agreement will be given in evidence.*

58A Pursuant to clause 17.8(a) of the Franchise Agreement, and subject to clause 17.8(c) of the Franchise Agreement, UPF could increase the Franchise Service Fee to an amount which is equal to or less than 14% of the average monthly Gross Revenue (plus GST).

58B Pursuant to clause 17.8(a) of the Franchise Agreement, the Franchise Service Fee was not to be increased more than once each six (6) months, with the average monthly Gross Revenue for the purposes of clause 17.8(a) being calculated based on the last twelve (12) calendar months immediately preceding the month in which the Franchise

Service Fee is calculated.

- 58C Pursuant to clause 1.1 of the Franchise Agreement, "Gross Revenue" was defined as the aggregate of prices charged by the Franchisee and all other income, value and remuneration received or receivable by the Franchisee in the conduct of the Franchised Business in respect of the supply of Other Proprietary Products and Shop Products but excludes any sales of Motor Fuels and E-Pay.
- 58D At Leadership Team Meetings, it was common practice for Avi Silver to direct the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees without consultation with, or warning to, those Franchisees.

Particulars

The directions were given orally by Avi Silver at Leadership Team Meetings on an ad hoc basis.

The increases to the Franchise Service Fee for various Franchisees occurred throughout the Franchisee Relevant Period.

The precise amount of each increase was at the discretion of Avi Silver.

Leadership Team Meetings were held in the boardroom of the United Group head offices in Hawthorn, Victoria, and were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

The directions were given by Avi Silver to David Szymczak, Chief Operating Officer, Gary Brinkworth, Chief Executive Officer, George Svinos, Group Chief Financial Officer, and Claude Mestrov, Finance.

The identities of all the individual Franchisees who had their Franchise Service Fee increased, the dates on which it occurred, and the amounts of each increase are not currently within the Plaintiffs' knowledge, with particulars of the Franchisees, dates, and amounts to be provided following discovery.

L. Amounts paid by the Lead Plaintiffs – the JJ Trustees

- 59 On or about 29 May 2018, Mr Patel and Mr Bhatti in their capacities as trustees of the JJ Unit Trust (**the JJ Trustees**) entered into a Franchise Agreement with UPF United Petroleum (**JJ Franchise Agreement**).
- 59A At the time they entered into the JJ Franchise Agreement, the JJ Trustees employed fewer than 20 persons.

Particulars

At the time they entered into the JJ Franchise Agreement, the JJ Trustees employed only themselves.

60 Pursuant to the JJ Franchise Agreement, Mr Patel and Mr Bhatti acquired the right to operate a fuel reselling business at Lots 11-14 High Street, Wallan, Victoria 3756, trading as United Wallan (**Wallan Site**) for an initial term of 2 years and 8 months.

Particulars

Item 5 of Schedule 1 of the JJ Franchise Agreement.

Item 7 of Schedule 1 of the JJ Franchise Agreement.

61 The JJ Trustees paid the following amounts to UPF United Petroleum in consideration for entering into the JJ Franchise Agreement:

- (a) \$159,500 as an initial Franchise Fee, including GST;
 - (b) \$6,600 as a training fee, including GST; and
 - (c) on or about 23 May 2018, \$50,000 as a bank guarantee with the Commonwealth Bank of Australia in favour of UPF United Petroleum;
- (together, the **JJ Upfront Costs**).

Particulars

The payments of the franchise fee and the training fee were paid in four instalments between 11 May 2018 and 27 May 2018.

62 The JJ Trustees also paid the former franchisee to take over the Wallan Site, being Alpha N Omega Family Trust ABN 61 344 360 081 (**the JJ Takeover Costs**).

Particulars

- (a) *The JJ Takeover Costs included \$320,000 in goodwill, of which \$135,000 was paid to United to discharge a loan to the Alpha N Omega Family Trust on 21 May 2018 in three tranches;*
- (b) *The JJ Takeover Costs included \$48,353.88 for store stock;*
- (c) *The JJ Takeover Costs included \$225 in legal fees; and*

The JJ Trustees paid a total of \$397,111.56 between 30 April 2018 and 7 January 2021 to the Alpha N Omega Family Trust for the costs above, mostly by way of monthly instalments, which included \$28,532.68 in interest on the loan.

(d) *Further particulars of the JJ Takeover costs will be given in evidence.*

63 Throughout the duration of the JJ Franchise Agreement and while operating the Wallan Site, the JJ Trustees incurred and paid the following fees to UPF United Petroleum:

- (a) the Franchise Service Fee;
- (b) the Equipment Support Fee;
- (c) the Software Support Fee; and
- (d) the Insurance Fee,

(together, the **JJ Ongoing Costs**).

Particulars

- (a) *The Franchise Service Fee is defined at Item 12 of the Schedule to the JJ Franchise Agreement to be \$545.48 per day (inclusive of GST), which amount can be increased in accordance with clause 17.8.*
- (b) *The Equipment Support Fee is defined at Item 15 of the Schedule to the JJ Franchise Agreement to be \$35.00 per day (inclusive of GST).*
- (c) *The Software Support Fee is defined at Item 16 of the Schedule to the JJ Franchise Agreement to be \$5.53 per day (inclusive of GST).*
- (d) *The Insurance Fee is defined at Item 24 of the Schedule to the JJ Franchise Agreement to be \$22.50 per day (inclusive of GST).*
- (e) *Further particulars of the JJ Ongoing Costs throughout the term of the JJ Franchise Agreement will be given in evidence.*

64 Mr Patel is and at all material times was a guarantor in his personal capacity under the JJ Franchise Agreement.

Particulars

Item 4 of Schedule 1 of the JJ Franchise Agreement.

65 Mr Bhatti is and at all material times was a guarantor in his personal capacity under the JJ Franchise Agreement.

Particulars

Item 4 of Schedule 1 of the JJ Franchise Agreement.

M. Amounts paid by the Lead Plaintiffs – Yug Sharma

65A On or about 14 April 2020, Yug Sharma entered into a Commission Agency Agreement with UP.

65B On or about April 2021, the agreement referred to in paragraph 65A above ended and Yug Sharma entered into a further Commission Agency Agreement with UP (together, the **Yug Sharma Agreement**).

65C At all material times, Yug Sharma employed fewer than 20 persons.

Particulars

At the time it entered into the Yug Sharma Agreement with UP, Yug Sharma employed four persons.

65D The premises to be operated under the Yug Sharma Agreement by Yug Sharma were located at 55-57 High Street, Heathcote VIC 3523 (**Heathcote Site**).

65E The guarantor under the Yug Sharma Agreement was Jagmohan Sharma.

65F At the time of entry into the Yug Sharma Agreement, Yug Sharma paid approximately \$67,000 for the store stock at the Heathcote Site (**Yug Sharma Upfront Costs**).

65G For the purposes of the Yug Sharma Agreement, Yug Sharma provided a \$15,000 cash guarantee to UP.

Particulars

The \$15,000 cash guarantee was paid by way of \$100 per day over 150 days.

65H At the time of the commencement of the Yug Sharma Agreement, Yug Sharma also provided a guarantee of \$15,000 to UP by way of bank cheque in favour of Mayden Pty Ltd.

65I During the term of the Yug Sharma Agreement, Yug Sharma paid UP approximately:

- (a) \$303.20 per day as a licence fee;
- (b) \$55.50 in insurance, repairs, and maintenance; and
- (c) \$22.57 per day for cash transit security.

(together, the **Yug Sharma Ongoing Costs**).

65J On or about 12 October 2022, the Yug Sharma Agreement ended.

N. Amounts paid by Group Members – Franchisees

66 Throughout the Franchisee Relevant Period, Franchisees paid:

- (a) upfront costs to UPF United Petroleum as consideration for entering into their respective Franchise Agreements (**Franchisee Upfront Costs**);
- (b) previous Franchisees for goodwill and store stock when taking over their franchises in the United Network (**Franchisee Takeover Costs**); and

- (c) fees to UPF United Petroleum incurred pursuant to their Franchise Agreements (**Franchisee Ongoing Costs**).

Particulars

Particulars of the Franchisee Upfront Costs, Franchisee Takeover Costs, and the Franchisee Ongoing Costs incurred by Franchisees throughout the term of their respective Franchise Agreements will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

O. Amounts paid by Group Members – Commission Agents

- 66A Throughout the Commission Agent Relevant Period, Commission Agents paid licence fees (sometimes described as "rent") to UP which was set by reference to a percentage of monthly retail sales.

Particulars

Licence Fees were often paid in tiers as a percentage of forecasted retail sales, with the greater the amount of forecasted retail sales, the greater the percentage paid by Commission Agents.

Particulars of the licence fees incurred by Commission Agents throughout the term of their respective Commission Agency Agreements will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

- 66AA Commission Agents would pay upfront for stock when entering into a Commission Agency Agreement in the United Network (**Upfront Stock Costs**).

Particulars

Particulars of the Upfront Stock Costs incurred by Commission Agents will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

- 66B It was general business practice at Leadership Team Meetings for Avi Silver to direct the United Petroleum Executive to increase the Licence Fee (also known as "rent") of individual Commission Agents.

Particulars

The directions were given orally by Avi Silver at Leadership Team Meetings on an ad hoc basis.

The increases to the Licence Fee for various Commission Agents occurred throughout the Commission Agent Relevant Period.

The amount of each increase was at the discretion of Avi Silver.

Leadership Team Meetings occurred from time to time in the boardroom of the United Petroleum head office at Hawthorn, Victoria, and were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

The directions were given by Avi Silver to David Szymczak, Chief Operating Officer, Gary Brinkworth, Chief Executive Officer, George Svinos, Group Chief Financial Officer, and Claude Mestrov, Finance.

Between April 2020 and April 2022, Yug Sharma, the Commission Agent for United Heathcote, had its rent increased from about \$303 per day to about \$366 per day.

In about November 2020, S and R Mutual Services Pty Ltd as trustee for the R & R Judge Family Trust, the Commission Agent for United Kilmore, had its rent increased from about \$350 to about \$450 per day.

The identities of all the individual Commission Agents who had their Licence Fee increased, the dates on which it occurred, and the amounts of each increase are not currently within the Plaintiffs' knowledge, and particulars of the same will be provided following discovery.

P. Small Business Contracts

66C By reason of the matters pleaded in paragraphs 53A, 54, 56, 59A, 60, 61, and 66 above, each Franchise Agreement was a *small business contract* within the meaning of section 23(4) of the ACL (as pleaded at paragraph 163 below).

66D By reason of the matters in paragraphs 65C, 66A, and 66AA above, each Commission Agency Agreement was a *small business contract* within the meaning of section 23(4) of the ACL (as pleaded at paragraph 163 below).

Q. Internal systems of the United Group

66E The United Group operated an internal software system known as "SwiftPOS" (**the SwiftPOS System**).

66F The SwiftPOS System, and the data it was able to generate, was accessible by:

- (a) all members of the United Petroleum Executive; and
- (b) Avi Silver.

66G The SwiftPOS System was integrated into the United Network, in that it was functional on the computer systems operated by each Franchisee and Commission Agent.

66H By reason of the SwiftPOS System, at all material times UPF and Avi Silver had access to data showing what stock was being sold by a Franchisee in any particular site in the United Network and at what price, including total gross sales.

Particulars

The SwiftPOS system could generate, among other reports: sales reports for any period requested by the operator; product reports showing sell and cost prices; stock on hand reports; overstocked reports; and stocktake reports.

66I By reason of the SwiftPOS System, at all material times UP and Avi Silver had access to data showing what stock was being sold by a Commission Agent in any particular site in the United Network and at what price, including total gross sales.

Particulars

The SwiftPOS system could generate, among other reports: sales reports for any period; product reports showing sell and cost prices; stock on hand reports; overstocked reports; and stocktake reports.

66J By reason of the SwiftPOS System, at all material times UPF and Avi Silver had access to data showing what stock was not being sold by a Franchisee and was disposed of and recorded as 'Wastage', including the total amount being recorded as 'Wastage' on any particular day, week, or month (**Wastage Reports**).

66JJ A Wastage Report displayed:

- (a) the name, address, contact phone number, and ABN of a particular Franchisee or Commission Agent;
- (b) each stock item that was being disposed of by that Franchisee or Commission Agent;
- (c) the total retail value of the stock that was being disposed of by that Franchisee or Commission Agent; and
- (d) the date of that Wastage Report.

- 66K By reason of the SwiftPOS System and the Wastage Reports, at all material times UP and Avi Silver had access to data showing what stock was not being sold by a Commission Agent and was disposed of and recorded as 'Wastage', including the total amount being recorded as 'Wastage' on any particular day, week, or month.
- 66KK At the conclusion of each day, Franchisees and Commission Agents took sales reports generated by SwiftPOS for fuel sales, and inputted the data into a 'Closing Day Sheet' which showed the amount of sales generated, less the franchise fee or licence fee, and less fuel commission (**Closing Day Sheets**).
- 66KKK By reason of the Closing Day Sheets and the sales data generated through SwiftPOS as pleaded at paragraphs 66H – 66K above, at all material times, UPF, UP, and Avi Silver had access to information showing the daily profitability of every site in the United Network.
- 66L The United Group operated an internal computer drive which stored internal management and operational documents of the United Group (**Shared Drive**).
- 66M At all material times, the Shared Drive was accessible by:
- (a) Avi Silver; and
 - (b) the United Petroleum Executive.
- 66N Within the United Group and at all material times throughout the Franchisee Relevant Period and Commission Agent Relevant Period, stock pricing for different categories of stock was recorded on spreadsheets known as a "Pricing Matrix" and stored on the Shared Drive, with each "Pricing Matrix" displaying:
- (a) the wholesale price paid to a member of the United Group or a third party supplier for that stock by a Franchisee or Commission Agent;
 - (b) the retail price at which that stock was sold by a Franchisee or Commission Agent;
 - (c) the profit margin that was being made by the United Group on the difference between the wholesale price and the retail price; and
 - (d) the resulting profit margin that was being made by the Franchisee or Commission Agent.
- 66O At all material times, the "Pricing Matrix" for various categories of stock sold by Franchisees and Commission Agents was stored on the Shared Drive, and available to:
- (a) Avi Silver; and
 - (b) the United Petroleum Executive.

66P At all material times, a “Pricing Matrix” for a stock category had to be approved by Avi Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Avi Silver.

R. In-house legal team of the United Group

66Q At all material times, the United Group engaged the services of an in-house legal team (United Lawyers).

Particulars

The United Lawyers comprised General Counsel, Andrew McLean and solicitors employed by the United Group under his supervision.

The United Lawyers were located on Level 2 of the corporate offices of the United Group.

66R The United Lawyers were responsible drafting the Franchise Agreements and Commission Agency Agreements.

66S The United Lawyers drafted the Franchise Agreements and Commission Agency Agreements pursuant to directions given by Avi Silver.

Particulars

General Counsel, Andrew McLean would oversee the solicitors employed by the United Group.

Mr McLean would from time to time provide Mr Silver with the Franchise Agreements and Commission Agency Agreements drafted by solicitors employed under the supervision of Mr McLean, which Mr Silver would review and direct changes to, and subsequently approve those documents being issued to individual Franchisees and Commission Agents. The directions were orally provided by Mr Silver at meetings between Mr Silver and Mr McLean at United Group’s head office in Hawthorn, Victoria.

Mr Silver would also from time to time provide directions to Gary Brinkworth, Chief Executive Officer of the United Group regarding the drafting of individual Franchise Agreements and Commission Agency Agreements, and Mr Brinkworth would then provide those directions to Mr McLean. These directions were orally provided by Mr Silver at meetings between Mr Silver and Mr Brinkworth at United Group’s head office in Hawthorn, Victoria.

S. UP acting as agent of UPF

66T Throughout the Franchise Relevant Period, UP had the implied authority of and acted

as agent for UPF in giving directions to Franchisees.

Particulars

In circumstances where:

- (a) UPF and UP share the same two directors, Avi Silver and Eddie Hirsch;
- (b) UPF and UP are two entities within the United Group; and
- (c) as pleaded at paragraphs 68-73, 75, 78, 94 below, representatives of UP issued directions to Franchisees;

it can be inferred that:

- (d) UPF was aware that representatives of UP were issuing directions to UP;
and
- (e) UP had the implied authority of UPF to do so.

66U Further or alternatively, throughout the Franchise Relevant Period, UP had the ostensible authority of and acted on behalf of UPF in giving directions to Franchisees.

Particulars

In circumstances where:

- (a) UPF and UP share the same two directors, Avi Silver and Eddie Hirsch;
- (b) UPF and UP are two entities within the United Group; and
- (c) as pleaded at paragraphs 68-73, 75, 78, 94 below, representatives of UP issued directions to Franchisees;

the ostensible authority of UP to act on behalf of UPF in giving directions to Franchisees arises in circumstances where UPF permitted UP to conduct itself in the way it did in giving directions to Franchisees, and in so doing represented to Franchisees that UP had the authority of UPF to give those directions.

T. Operating a Pie Face Site

67 During the Franchisee Relevant Period and Commission Agent Relevant Period, the utility bills to operate a Pie Face Site in the United Network were higher than the utility costs were previously ~~were~~ in those sites, due to the energy consumption requirements of the ovens, freezers, and stock cabinets required to be used for Pie Face stock (**Pie Face Utility Costs**).

Particulars

- (a) *Particulars of the Pie Face Utility Costs associated with the Cranbourne*

South Site operated by FNH will be provided in evidence.

- (b) *Particulars of the Pie Face Utility Costs associated with the Wallan Site operated by the JJ Trustees will be provided in evidence.*
- (bb) *Particulars of the Pie Face Utility Costs associated with the Heathcote Site operated by Yug Sharma will be provided in evidence.*
- (c) *Particulars of the Pie Face Utility Costs associated with the sites operated by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.*
- (d) *A reference to Pie Face "stock" is a reference to pies and other bakery products sold under the signs, names, and trademarks comprising the Pie Face Intellectual Property.*

68 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP ~~United Petroleum~~ required Franchisees and Commission Agents respectively who operated Pie Face Sites to employ members of staff in the handling and retailing of Pie Face stock (**Pie Face Team Members**).

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to Pie Face Team Members, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) *Particulars of the Pie Face Team Members employed by FNH will be provided in evidence.*
- (b) *Particulars of the Pie Face Team Members employed by the JJ Trustees will be provided in evidence.*
- (bb) *Particulars of the Pie Face Team Members employed by Yug Sharma will be provided in evidence.*
- (c) *Particulars of the Pie Face Team Members employed by Franchisees and*

Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

- (d) A reference to Pie Face "stock" is a reference to pies and other bakery products sold under the branding and trademarks comprising the Pie Face Intellectual Property.

69 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and ~~UP United Petroleum~~ required Franchisees and Commission Agents respectively who operated Pie Face Sites to establish accounts with particular suppliers of Pie Face stock (**Pie Face Suppliers**).

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to the establishment of accounts with Pie Face Suppliers, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) FNH and the JJ Trustees, and Yug Sharma, were required by UPF and UP respectively ~~United Petroleum~~ to establish accounts with suppliers of Pie Face stock including but not limited to:
- (i) Countrywide Food Service Distributors (Pie Face branded pies and bakery products);
 - (ii) Show Travel FILM (STF) Services International Pty Ltd (ACN 630 164 359) (Pie Face branded sandwiches);
 - (iii) Bean Alliance Group Pty Ltd (ACN 629 492 440) (Pie Face branded coffee beans);
 - (iv) PFD Food Services Pty Ltd (Pie Face branded water, boxes, bags, napkins, stickers, tomato sauce, and cleaning chemicals); and
 - (v) UCC Coffee Australia Limited trading as Espresso Mechanics (coffee machine and cleaning materials).
- (b) Particulars of the suppliers with whom Franchisees and Commission Agents

were required to establish accounts will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

- (c) *A reference to Pie Face "stock" is a reference to pies and other products sold under the signs, names, and trademarks comprising the Pie Face Intellectual Property.*

70 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and ~~UP United Petroleum~~ required Franchisees and Commission Agents respectively who operated Pie Face Sites to contact their local council for a site visit and complete a food premises licence application (or transfer the existing food premises licence), as well as to undertake (and pay for) a food safety supervisor course (the costs associated with the course being the **Pie Face Course Costs**).

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to food safety, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) *On behalf of FNH, on or about 6 April 2020, Mr Istanikzai signed a Request to Transfer a Food Premises with the City of Casey Council from KP Groups Pty Ltd at a cost of \$785.*
- (b) *On behalf of FNH, on or about 3 December 2020, Mr Istanikzai completed a food premises licence application.*
- (c) *On behalf of FNH, on or about 11 April 2020, Mr Istanikzai completed a food safety supervisor course at a cost of \$210.00.*
- (d) *On or about 6 April 2020, Mr Patel contacted Mitchell Shire Council for a site visit, which occurred on or about 9 April 2020.*
- (e) *On or about 9 April 2020, the site was converted by Mitchell Shire Council from pack food selling (Class 3) to open food selling (class 2).*
- (f) *On or about 19 May 2020, Mr Bhatti completed a food safety supervisor course at a cost of \$86.*

- (g) *Particulars of the council site visits, food premises licence applications, and food safety supervisor courses undertaken by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

71 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP ~~United Petroleum~~ required Franchisees and Commission Agents respectively who operated Pie Face Sites to purchase uniforms consisting of a Pie Face jacket, Pie Face cap, and chef's hat to be worn by Pie Face Team Members (the costs associated with such purchases being the **Pie Face Uniform Costs**).

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to the uniform requirements of Pie Face Team Members, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) *Particulars of the Pie Face Uniform Costs incurred by FNH will be provided in evidence.*
- (b) *Particulars of the Pie Face Uniform Costs incurred by the JJ Trustees will be provided in evidence.*
- (bb) *Particulars of the Pie Face Uniform Costs incurred by Yug Sharma will be provided in evidence.*
- (c) *Particulars of the Pie Face Uniform Costs incurred by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

72 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP ~~United Petroleum~~ required Franchisees and Commission Agents respectively who operated Pie Face Sites to have a minimum number of Pie Face Team Members working shifts at certain times.

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to Pie Face Team Members, particulars of which will be given in evidence, failing compliance with which Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) *Particulars of the shifts required to be worked by Pie Face Team Members employed by FNH will be given in evidence.*
- (b) *Particulars of the shifts required to be worked by Pie Face Team Members employed by the JJ Trustees will be given in evidence.*
- (bb) *Particulars of the shifts required to be worked by Pie Face Team Members employed by Yug Sharma will be given in evidence.*
- (c) *Particulars of the shifts required to be worked by Pie Face Team Members employed by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

73 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP United Petroleum required Franchisees and Commission Agents who operated Pie Face Sites to display an accreditation and training certificate certifying that they had completed a "Pie Face Operations" training program and had been awarded compliance in customer service, safe food handling, hygiene, baking, coffee, retail presentation standards and Uber Eats operations.

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to accreditation and training, particulars of which will be given in evidence, failing compliance with which Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) *At the Cranbourne South Site, FNH was required to, and did, display an accreditation and training certificate.*
- (b) *At the Wallan Site, the JJ Trustees were required to, and did, display an accreditation and training certificate.*
- (bb) *At the Heathcote Site, Yug Sharma was required to, and did, display an accreditation and training certificate.*
- (c) *Particulars of the accreditation and training certificates displayed by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

74 By reason of the matters pleaded at paragraphs 67 to 73 above, Franchisees and Commission Agents who operated Pie Face Sites incurred operating costs that were not incurred by Franchisees and Commission Agents who did not operate Pie Face Sites (the **Pie Face Overheads**).

Particulars

The Pie Face Overheads included the Pie Face Utility Costs, the Pie Face Uniform Costs, the costs of employing Pie Face Team Members, and the Pie Face Course Costs.

74A Throughout the Franchisee Relevant Period and the Commission Agent Relevant Period, the Pie Face Overheads were discussed at Leadership Team Meetings at which Avi Silver was present.

Particulars

The discussions regarding the Pie Face Overheads occurred at Leadership Team Meetings on an ad hoc basis throughout the Franchisee Relevant Period and Commission Agent Relevant Period.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings occurred at least monthly, and at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays. Informal conferences would occur at the United Group head quarters in Hawthorn, Victoria.

The other members of the United Petroleum Executive with whom Avi Silver

discussed the Pie Face Overheads included David Szymczak, Chief Operating Officer of the United Group, Bruce Federoff, Pie Face Chief Executive Officer, and Gary Brinkworth, Chief Executive Officer.

The substance of the discussions were that Pie Face Sites were incurring higher operating costs than non-Pie Face Sites.

- 75 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP ~~United Petroleum~~ directed Franchisees and Commission Agents respectively operating Pie Face Sites on how to display, retail, and sell Pie Face stock, including by way of a planogram (Pie Face Site Directions).

Particulars

The Pie Face Site Directions were at times in the form of a planogram (being a visual representation of how a particular display shelf or cabinet should be stocked), or alternatively were at times a directive from a representative of UPF and/or UP (such as an Area Manager or State Manager), with such directions at times being in email form and at times conveyed verbally to Franchisees and Commission Agents during a phone call or a site visit.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) Particulars of the Pie Face Site Directions given to FNH by employees of the United Group ~~United Petroleum~~ will be given in evidence.
- (b) Particulars of the Pie Face Site Directions given to the JJ Trustees by employees of the United Group ~~United Petroleum~~ will be given in evidence.
- (bb) Particulars of the Pie Face Site Directions given to Yug Sharma by employees of the United Group will be given in evidence.
- (c) Particulars of the Pie Face Site Directions given to Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.
- (d) A reference to Pie Face "stock" is a reference to pies and other products sold under the signs, names, and trademarks comprising the Pie Face Intellectual Property.

75A The Pie Face Site Directions were issued and/or caused by the United Petroleum Executive, acting on instructions from Avi Silver received at Leadership Team Meetings or informal conferences.

Particulars

The instructions were given by Avi Silver at Leadership Team Meetings on an ad hoc basis throughout the Franchisee Relevant Period and Commission Agent Relevant Period.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings occurred at least monthly, and at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays. Informal conferences would occur at the United Group head quarters in Hawthorn, Victoria.

The members of the United Petroleum Executive to whom Avi Silver gave the instructions were David Szymczak, Chief Operating Officer of the United Group, Bruce Federoff, Pie Face Chief Executive Officer, and Gary Brinkworth, Chief Executive Officer

The instructions of Avi Silver were verbal.

The substance of the instructions from Avi Silver to members of the United Petroleum Executive were to ensure that all sites within the United Petroleum network that were being allocated Pie Face stock had full display cabinets at all times for the Pie Face stock, including by compliance with the relevant planogram for the display of that stock, so that no Pie Face product would appear to be low on or out of stock.

FNH was emailed or downloaded planograms which provided the Pie Face Site Directions on ad hoc basis throughout the term of the FNH Franchise Agreement, and which were specific to the Cranbourne South Site.

FNH was also visited, emailed and called by representatives of UPF and/or UP on an ad hoc basis if there was any deemed non-compliance with the planogram that had been issued to FNH.

FNH no longer has access to the United email account and computer systems which contained planograms and other Pie Face Site Directions. Further particulars of the same will be provided following discovery.

The JJ Trustees were emailed or downloaded planograms which provided the Pie

Face Site Directions on ad hoc basis throughout the term of the JJ Franchise Agreement, and which were specific to the Wallan Site.

The JJ Trustees were also visited, emailed and called by representatives of UPF and/or UP on an ad hoc basis if there was any deemed non-compliance with the planogram that had been issued to the JJ Trustees.

The JJ Trustees no longer have access to the United email account and computer systems which contained planograms and other Pie Face Site Directions. Further particulars of the same will be provided following discovery.

Yug Sharma was emailed or downloaded planograms which provided the Pie Face Site Directions on ad hoc basis throughout the term of the Yug Sharma Agreement, and which were specific to the Heathcote Site.

Yug Sharma was also visited, emailed and called by representatives of UP on an ad hoc basis if there was any deemed non-compliance with the planogram that had been issued to Yug Sharma.

Yug Sharma no longer has access to the United email account and computer systems which contained planograms and other Pie Face Site Directions. Further particulars of the same will be provided following discovery.

76 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP United Petroleum audited compliance of Pie Face Sites with the Pie Face Site Directions (**Pie Face Audits**).

Particulars

- (a) *Particulars of the Pie Face Audits experienced by FNH will be given in evidence.*
- (b) *Particulars of the Pie Face Audits experienced by the JJ Trustees will be given in evidence.*
- (bb) Particulars of the Pie Face Audits experienced by Yug Sharma will be given in evidence.
- (c) *Particulars of the Pie Face Audits experienced by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

76AA The Pie Face Audits were issued and/or caused by the United Petroleum Executive,

acting on instructions from Avi Silver received at Leadership Team Meetings or informal conferences.

Particulars

The instructions were given by Avi Silver at Leadership Team Meetings on an ad hoc basis.

The instructions of Avi Silver were verbal.

Avi Silver issued the directions to David Szymczak, Chief Operating Officer of the United Group, Gary Brinkworth, Chief Executive Officer, and Bruce Federoff, Pie Face Chief Executive Officer.

The instructions of Avi Silver were given at Leadership Team Meetings held in the boardroom at the United Head Office from time to time, or were occasionally given in informal conferences between Avi Silver and David Szymczak, Gary Brinkworth, and Bruce Federoff.

The substance of the instructions by Avi Silver to members of the United Petroleum Executive were to audit a Franchisee or Commission Agent's compliance with the planograms for any Franchisee or Commission Agent that was deemed to be failing to comply with the Pie Face Site Directions.

FNH experienced Pie Face Audits, on average, every few weeks when an auditor visited the Cranbourne South Site and otherwise on an ad hoc basis. Each Pie Face Audit took on average a couple of hours. Within a day or two after each Pie Face Audit, FNH would submit an email demonstrating that issues identified with the Pie Face Audit had been rectified. FNH no longer has access to the United email address that contains the communications sent by FNH after a Pie Face Audit, and particulars of the same including the dates of each audit experienced by FNH will be provided following discovery.

The JJ Trustees experienced Pie Face Audits, on average, every few weeks when an auditor visited the Wallan Site and otherwise on an ad hoc basis. Each Pie Face Audit took on average a couple of hours. Within a day or two after each Pie Face Audit, the JJ Trustees would submit an email demonstrating that issues identified with the Pie Face Audit had been rectified by the JJ Trustees. The JJ Trustees no longer have access to the United email address that contains the communications sent by the JJ Trustees after a Pie Face Audit, and particulars of the same including the dates of each audit experienced by the JJ Trustees will be provided

following discovery.

Yug Sharma experienced Pie Face Audits, on average, every few weeks when an auditor visited the Heathcote Site and otherwise on an ad hoc basis. Each Pie Face Audit took on average a couple of hours. Within a day or two after each Pie Face Audit, Yug Sharma would submit an email demonstrating that issues identified with the Pie Face Audit had been rectified. Yug Sharma no longer has access to the United email address that contains the communications sent by Yug Sharma after a Pie Face Audit, and particulars of the same experienced by Yug Sharma will be provided following discovery.

76A Following the acquisition of the Pie Face Franchise by a member of the United Group, on a date unknown to the Plaintiffs, Avi Silver directed the installation of cameras into sites in the United Network to monitor whether there was compliance with the Pie Face Site Directions given to Franchisees and Commission Agents.

Particulars

The directions were oral.

The substance of the directions given by Avi Silver were to install cameras within sites in the United Network into which the Pie Face Franchise was to be installed or already installed, and to ensure those cameras faced locations that would display Pie Face stock.

Avi Silver issued the directions to David Szymczak, Chief Operating Officer of the United Group, Gary Brinkworth, Chief Executive Officer, and Bruce Federoff, Pie Face Chief Executive Officer at meetings following the Acquisition Date, the precise dates of which meetings are currently unknown to the Plaintiffs.

As to the dates of the installations, cameras were usually installed as the Pie Face Franchise was installed into each site in the United Network following the acquisition of the Pie Face Franchise by a member of the United Group in 2017.

As to the sites, the cameras were usually installed into each site that had a Pie Face Franchise within the United Network.

There were usually several cameras in each site within the United Network, which would face various food display areas such as the Pie Face pie cabinet, and coffee machines.

76B The cameras were monitored by:

- (a) Avi Silver; and
- (b) a team within United Group head office (**Surveillance Team**).

Particulars

The Surveillance Team within the United Group head office included, on average, three camera operators with visual access to the cameras installed in sites throughout the United Network. The Surveillance Team would regularly rotate shifts, with both morning and afternoon/evening shifts.

Avi Silver had access to a separate display of the cameras in his offices at the United Group head office.

76C The Surveillance Team reported any failure to comply with the Pie Face Site Directions to members of the United Petroleum Executive.

76D If the Surveillance Team discovered a breach of the Pie Face Site Directions by a Franchisee or Commission Agent, this could result in:

- (a) a breach notice being issued to that Franchisee or Commission Agent;
- (b) a fine being issued to that Franchisee or Commission Agent; and/or
- (c) a termination notice being issued to that Franchisee or Commission Agent.

76E It was general business practice at Leadership Team Meetings for termination notices for Franchisees and Commission Agents, to be approved by Avi Silver prior to being issued.

Particulars

The approvals were verbal and were given at Leadership Team Meetings by Avi Silver.

The Leadership Team Meetings were held in the boardroom at the United Head Office from time to time, or were occasionally informal conferences between Avi Silver and David Szymczak, Gary Brinkworth, and Bruce Federoff.

Avi Silver gave the approvals to David Szymczak, Chief Operating Officer of the United Group, Gary Brinkworth, Chief Executive Officer, and Bruce Federoff, Pie Face Chief Executive Officer.

On or about 25 January 2021, the JJ Trustees received a termination notice advising of the termination of the JJ Franchise Agreement.

On or about 25 February 2021, FNH received a termination notice advising of the termination of the FNH Franchise Agreement.

U. Pie Face Wastage

77 During the Franchisee Relevant Period and Commission Agent Relevant Period, at various times and without request by Franchisees and Commission Agents, representatives of UPF and/or UP ~~United Petroleum~~ ordered various amounts of Pie Face stock from Pie Face Suppliers, in quantities determined by UPF and UP ~~United Petroleum~~, to be sent to Franchisees and Commission Agents respectively operating Pie Face Sites, including the sites of the Plaintiffs (Allocated Pie Face Stock).

Particulars

To the extent the orders were made and sent to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

- (a) *Particulars of the Allocated Pie Face Stock allocated to FNH will be given in evidence and following discovery.*
- (b) *Particulars of the Allocated Pie Face Stock allocated to the JJ Trustees will be given in evidence and following discovery.*
- (bb) Particulars of the Allocated Pie Face Stock allocated to Yug Sharma will be given in evidence and following discovery.
- (c) *Particulars of the Allocated Pie Face Stock allocated to Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*
- (d) *A reference to Pie Face "stock" is a reference to pies and other products sold under the branding and trademarks comprising the Pie Face Intellectual Property.*

77A Prior to being allocated, lists of Allocated Pie Face Stock were prepared by senior management of the United Group, usually a General Manager.

77B Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, it was general business practice for lists of Allocated Pie Face Stock referred to in paragraph 77A above to be provided to Avi Silver at Leadership Team Meetings for approval.

Particulars

The Leadership Team Meetings were held in the boardroom at the United

Head Office from time to time, or were occasionally informal conferences between Avi Silver and David Szymczak, Gary Brinkworth, and Bruce Federoff.

Gary Brinkworth, Chief Executive Officer, would regularly supply lists of Allocated Pie Face Stock to Avi Silver at Leadership Team Meetings or informal conferences.

The Plaintiffs are not in possession of the lists of Allocated Pie Face Stock provided to Avi Silver at Leadership Team Meetings, and particulars of the same will be provided following discovery.

77C It was general business practice for Avi Silver to approve the lists of Allocated Pie Face Stock provided to him at Leadership Team Meetings as referred to in paragraph 77B above.

Particulars

The approvals were verbal and were given at Leadership Team Meetings by Avi Silver.

The Leadership Team Meetings were held in the boardroom at the United Head Office from time to time, or were occasionally informal conferences between Avi Silver and David Szymczak, Gary Brinkworth, and Bruce Federoff.

Throughout the Franchisee Relevant Period and the Commission Agent Relevant Period, on an ad hoc basis, Avi Silver would orally advise Gary Brinkworth, Chief Executive Officer, in both Leadership Team Meetings and informal conferences, whether or not Mr Silver approved the lists of Allocated Pie Face Stock that Mr Brinkworth had provided to him.

The Plaintiffs are not in possession of the lists of Allocated Pie Face Stock provided to Avi Silver at Leadership Team Meetings, and particulars of the same will be provided following discovery.

77D Further or alternatively, and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, it was general business practice for Avi Silver to direct the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network, and that Franchisees and Commission Agents were to pay for the stock allocated to them.

Particulars

The directives were oral and were given on an ad hoc basis throughout the

Franchisee Relevant Period and the Commission Agent Relevant Period.

The directives were issued at Leadership Team Meetings.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

The directives would be given by Avi Silver to David Szymczak, Chief Operating Officer of the United Group, Gary Brinkworth, Chief Executive Officer, and Bruce Federoff, Pie Face Chief Executive Officer.

The substance of the directives were to allocate Pie Face stock in the possession of United throughout the United Network, to ensure that all stores that contained a Pie Face Franchise stocked the full range of Pie Face products, and for Franchisees and Commission Agents to pay for the stock allocated to them.

The allocated Pie Face stock included branded Pie Face cups, doughnuts, cakes, pies, chips, water, and sandwiches. The precise sites, the types of Pie Face stock they received and the amounts of each type of stock are not within the Plaintiffs' knowledge, and further particulars of the sites, stock and amounts will be provided following discovery.

77E The United Petroleum Executive issued Allocated Pie Face Stock throughout the United Network upon the direction of Avi Silver pleaded at paragraph 77D above.

Particulars

In accordance with the directions of Avi Silver, David Szymczak, Chief Operating Officer of the United Group, Gary Brinkworth, Chief Executive Officer, and Bruce Federoff, Pie Face Chief Executive Officer would direct State Managers and Area Managers to issue the Allocated Pie Face Stock throughout the United Network.

FNH was allocated Pie Face stock on an ad hoc basis, at least monthly and sometimes more frequently, depending on whether there was a promotion on particular Pie Face stock or a large quantity of Pie Face stock produced or purchased by a company in the United Group.

The JJ Trustees were allocated Pie Face stock on an ad hoc basis, at least monthly and sometimes more frequently, depending on whether there was a promotion on particular Pie Face stock or a large quantity of

Pie Face stock produced or purchased by a company in the United Group.

Yug Sharma was allocated Pie Face stock on an ad hoc basis, at least monthly and sometimes more frequently, depending on whether there was a promotion on particular Pie Face Stock or a large quantity of Pie Face Stock produced or purchased by a company in the United Group.

77E Some Pie Face stock was produced directly by the United Group at a commissary kitchen.

Particulars

A commissary kitchen is an industrial kitchen that is equipped to produce large volumes of food products.

A reference to Pie Face "stock" is a reference to pies and other products sold under the branding and trademarks comprising the Pie Face Intellectual Property.

77G The Pie Face stock produced directly by the United Group at the commissary kitchen was the same stock produced by Original Pie Face at the commissary kitchen.

Particulars

A reference to Pie Face "stock" is a reference to pies and other products sold under the branding and trademarks comprising the Pie Face Intellectual Property.

77H Some Pie Face stock was produced by third party suppliers.

Particulars

One third party supplier of which the Plaintiffs are aware is 'The Outback Pie Co' in Townsville, Queensland, which produced Pie Face pies and sausage rolls for the United Group.

Particulars of other suppliers of Pie Face stock will be given in evidence and following discovery.

A reference to Pie Face "stock" is a reference to pies and other products sold under the branding and trademarks comprising the Pie Face Intellectual Property.

77I The Pie Face stock produced by third party suppliers was the same stock produced by the third party suppliers for Original Pie Face.

Particulars

One third party supplier of which the Plaintiffs are aware is 'The Outback Pie Co' in Townsville, Queensland, which produced Pie Face pies and sausage rolls for the

United Group.

Particulars of other suppliers of Pie Face stock will be given in evidence and following discovery.

A reference to Pie Face "stock" is a reference to pies and other products sold under the branding and trademarks comprising the Pie Face Intellectual Property.

- 78 Franchisees and Commission Agents who operated Pie Face Sites, including FNH and the JJ Trustees were required to pay UPF and UP respectively (for Allocated Pie Face Stock sent directly by UPF and UP) and/or pay Pie Face Suppliers for the Allocated Pie Face Stock in accordance with the terms stipulated by the Pie Face Suppliers.

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to Allocated Pie Face Stock, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

The payment terms stipulated by suppliers varied depending on the supplier.

Particulars of the terms stipulated by the Pie Face Suppliers will be given in evidence.

A reference to Pie Face "stock" is a reference to pies and other products sold under the branding and trademarks comprising the Pie Face Intellectual Property.

- 78A Franchisees and Commission Agents had the cost of Allocated Pie Face Stock directly debited from their bank accounts by UPF and UP respectively.

Particulars

FNH, the JJ Trustees, and Yug Sharma all had amounts for Allocated Pie Face Stock deducted from their bank accounts on an ad hoc basis after that stock had been received.

Particulars of the amounts deducted by UPF and UP from the accounts of FNH, the JJ Trustees, and Yug Sharma will be given in evidence and following discovery.

- 79 Franchisees and Commission Agents did not order the Allocated Pie Face Stock allocated to them by UPF and UP respectively United Petroleum.

80 Franchisees and Commission Agents who operated Pie Face Sites, including FNH and the JJ Trustees, had no control over the type or amount of the Allocated Pie Face Stock allocated to them by UPF and UP respectively ~~United Petroleum~~.

81 The Allocated Pie Face Stock received by Franchisees and Commission Agents was regularly 'short-dated' with a limited shelf during which the Allocated Pie Face Stock had to be sold before its expiry date.

Particulars

'Short-dated' means a product that is shortly due to pass its use-by date.

Particulars of the dates Allocated Pie Face Stock was received by Franchisees and Commission Agents and the expiry dates for that stock will be given in evidence and following discovery.

82 During the Franchisee Relevant Period and Commission Agent Relevant Period, payment for Allocated Pie Face Stock that was not sold by the expiry date by Franchisees and Commission Agents who operated Pie Face Sites was not reimbursed by UPF and UP respectively ~~United Petroleum~~.

83 Pie Face stock including Allocated Pie Face Stock that was not sold by the expiry date by Franchisees and Commission Agents who operated Pie Face Sites was disposed of and recorded as 'wastage' by those Franchisees and Commission Agents (**Pie Face Wastage**).

Particulars

(a) *Particulars of the Pie Face Wastage incurred by FNH will be given in evidence.*

(b) *Particulars of the Pie Face Wastage incurred by the JJ Trustees will be given in evidence.*

(bb) Particulars of the Pie Face Wastage incurred by Yug Sharma will be given in evidence.

(c) *Particulars of the Pie Face Wastage incurred by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

84 The Pie Face Wastage caused Franchisees and Commission Agents to suffer loss.

Particulars

- (a) *Particulars of the costs of the Pie Face Wastage incurred by FNH will be given in evidence and following discovery.*
- (b) *Particulars of the costs of the Pie Face Wastage incurred by the JJ Trustees will be given in evidence and following discovery.*
- (bb) Particulars of the costs of the Pie Face Wastage incurred by Yug Sharma will be given in evidence and following discovery.*
- (c) *Particulars of the costs of the Pie Face Wastage incurred by Franchisees and Commission Agents who operated Pie Face Sites will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

84A Throughout the Franchisee Relevant Period and the Commission Agent Relevant Period, the Pie Face Wastage was discussed at Leadership Team Meetings at which Avi Silver was present.

Particulars

The discussions regarding the Pie Face Wastage occurred at Leadership Team Meetings on an ad hoc basis throughout the Franchisee Relevant Period and Commission Agent Relevant Period.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings occurred at least monthly, and at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays. Informal conferences would occur at the United Group head quarters in Hawthorn, Victoria.

The other members of the United Petroleum Executive with whom Avi Silver discussed the Pie Face Wastage included David Szymczak, Chief Operating Officer of the United Group, Bruce Federoff, Pie Face Chief Executive Officer, and Gary Brinkworth, Chief Executive Officer.

The substance of the discussions were that Franchisees and Commission Agents were not selling all the Pie Face stock allocated to them by the expiry dates and were recording large amounts as wastage.

85 By reason of the SwiftPOS system, At all material times during the Franchisee Relevant

Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ had access to information for Pie Face Sites that recorded the actual amount of Allocated Pie Face Stock being sold by Franchisees and Commission Agents operating those sites.

Particulars

The Plaintiffs refer to and repeat paragraphs 66E – 66K above.

~~*At all material times, United had access to the “point of sale” system operated by all sites in the United Network, which system showed what stock was being sold by individual Franchisees in the United Network, including the Allocated Pie Face Stock.*~~

86 By reason of the matters pleaded at paragraphs 66E to 66KKK above, at all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ was in a position to assess whether or not Franchisees and Commission Agents respectively operating Pie Face Sites could reasonably be expected to sell, and were selling, the Allocated Pie Face Stock.

87 At all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ had access to Wastage Reports of ~~reports known as 'wastage reports'~~ by Franchisees and Commission Agents that recorded how much of the Allocated Pie Face Stock was being disposed of as wastage.

Particulars

The Plaintiffs refer to and repeat paragraphs 66E – 66K above.

87A At various times on an ad hoc basis, Franchisees and Commission Agents supplied their profit and loss statements to Area Managers or State Managers in order to demonstrate the losses being suffered by those Franchisees and Commission Agents.

Particulars

'Profit and loss statements' are profit and loss statements for individual businesses that were generated by Franchisees and Commission Agents or their agents based on their business records.

Particulars of the Franchisees and Commission Agents who supplied profit and loss statements, and the Area Managers or State Managers to whom they were supplied, will be given in evidence.

87B Following the supply of those profit and loss statements as pleaded in paragraph 87A

above, those Area Managers and State Managers supplied those profit and loss statements to the United Petroleum Executive.

Particulars

Particulars of the Area Managers and State Managers who supplied profit and loss statements to the United Petroleum Executive, and the members of the United Petroleum Executive to whom they were supplied, will be given in evidence.

88 By reason of the matters pleaded at paragraphs 87A and 87B above, and the United Petroleum Executive reporting to Avi Silver as pleaded at paragraph 52D above, At all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, as well as prior to the acquisition of the Pie Face Franchise, UPF and UP respectively United Petroleum and Avi Silver had access to and knowledge of profit and loss statements for Franchisees and Commission Agents that demonstrated the detrimental effect of the Allocated Retail Stock, the Allocated Pie Face Stock and the Pie Face Overheads on the business of Franchisees and Commission Agents.

88A On or about 27 June 2020, Mr Istanikzai advised David Szymczak, then Chief Operating Officer of the United Group, that the installation of the Pie Face Franchise into the Cranbourne South site had not increased sales, and instead FNH was recording losses through wastage of Pie Face 88M of approximately \$200 to \$300 daily.

Particulars

Letter from Fahim Istanikzai to David Szymczak attached to an email from Fahim Istanikzai dated 27 June 2020 (June 2020 Istanikzai Letter).

88B In the June 2020 Istanikzai Letter, Mr Istanikzai advised Mr Szymczak that, based on average daily shop sales, FNH's net income was not covering all the expenses, wages, wastage, and bills, including utility bills, and that FNH was operating at a "total loss".

Particulars

The Plaintiffs refer to the June 2020 Istanikzai Letter pleaded at paragraph 88A above.

88C In the June 2020 Istanikzai Letter, Mr Istanikzai advised Mr Szymczak that, based on the average daily shop sales, FNH's net income could not afford award wages for its employees.

Particulars

The Plaintiffs refer to the June 2020 Istanikzai Letter pleaded at paragraph 88A above.

88D By reason of the matters pleaded in paragraph 88A – 88C above, by no later than 30 June 2020, the United Petroleum Executive, and accordingly UPF, was aware that:

- (a) the installation of the Pie Face Franchise into the Cranbourne South site had not increased sales;
- (b) the wastage of Pie Face products was costing FNH approximately \$200 to \$300 daily; and
- (c) the Cranbourne South site was operating at a loss.

Particulars

The knowledge of the United Petroleum Executive is attributed to UPF as a matter of law.

88E In mid to late 2018, the precise date being unknown to the Plaintiffs, there was a Leadership Team Meeting at the headquarters of the United Group at which Avi Silver was present (2018 Westgate Commission Agent Meeting).

Particulars

The 2018 Westgate Commission Agent Meeting was held in the boardroom of the United Group head office at Hawthorn, Victoria.

Present at the Commission Agent Meeting were Avi Silver; David Szymczak, Chief Operating Officer of the United Group; and Gary Brinkworth, Chief Executive Officer

88F Present at the 2018 Westgate Commission Agent Meeting was a Commission Agent for the Westgate site (Westgate Commission Agent).

88G At the 2018 Westgate Commission Agent Meeting, the Westgate Commission Agent raised concerns with the attendees of the meeting that:

- (a) the installation of a Pie Face Franchise into sites operated by the Westgate Commission Agent had caused those sites to suffer financial loss, by reason of the increased costs associated with staffing, wastage and utility bills compared to the profit margins that were being derived from Pie Face stock; and
- (b) the continued operation of the sites with the Pie Face Franchise was financially unsustainable.

88H Throughout 2018, the precise dates of which are unknown to the Plaintiffs, senior management within the United Group raised concerns directly with the General Manager-Retail of the United Group in State Manager Meetings that:

- (a) the installation of a Pie Face Franchise into sites in the United Network had caused those sites to suffer financial loss, by reason of the increased costs associated with staffing, wastage and utility bills compared to the profit margins that were being derived from Pie Face stock; and
- (b) the continued operation of the sites with the Pie Face Franchise was financially unsustainable.

Particulars

Particulars of the dates of the State Management Meetings, the senior management involved, and the contents of the discussions will be given following discovery.

- 88I In 2018, the precise date being unknown to the Plaintiffs, UPF and UP engaged the services of UberEats and MenuLog for the distribution of food products sold by Franchisees and Commission Agents, which products included Pie Face stock.
- 88J In mid to late 2018, the precise date being unknown to the Plaintiffs, there was a Leadership Team Meeting, at which Avi Silver was present, at which the introduction of UberEats and MenuLog was discussed (**Delivery Aggregators Meeting**).

Particulars

The Delivery Aggregators Meeting occurred in mid-to late 2018, in the boardroom of the United head office at Hawthorn, Victoria.

- 88K At the Delivery Aggregators Meeting, a "Pricing Matrix" was tabled that displayed cost pricing and sale pricing for each item be delivered through UberEats and MenuLog, including Pie Face products, as well as:
- (a) profit margin to be made between cost and sale pricing for the United Group; and
 - (b) profit margin to be made between cost and sale pricing for a Franchisee or Commission Agent,
- (the **Delivery Aggregators Pricing Matrix**).

- 88L The Delivery Aggregators Pricing Matrix tabled at the Delivery Aggregators Meeting displayed:
- (a) minimal profit margin for Franchisees and Commission Agents on some products, and;
 - (b) negative profit margin for Franchisees and Commission Agents on other products.

- 88M Notwithstanding the matters pleaded in paragraphs 88K to 88L above, at the Delivery

Aggregators Meeting, Avi Silver directed the members of the United Petroleum Executive present to adjust the prices in the Delivery Aggregators Pricing Matrix so as to increase the profit margin for the United Group at the expense of Franchisees and Commission Agents.

Particulars

The direction was made orally by Avi Silver at the Delivery Aggregators Meeting.

V. Allocated Retail Stock

89 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ required Franchisees and Commission Agents respectively to establish relationships with approved suppliers of general retail stock such as food, drinks, and other items to be sold as part of the retail offering of the site (**Retail Suppliers**).

Particulars

Clauses 21.1(b) and 24.1(b) of the Franchise Agreement.

Definition of "Preferred Suppliers" contained in the Commission Agency Agreement.

The requirement otherwise arises out of the directions issued by UPF and UP with respect to the establishment of accounts with Retail Suppliers, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

Particulars of the Retail Suppliers will be given in evidence and following discovery.

90 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ at various times and without request by Franchisees or Commission Agents ordered retail stock such as confectionary, drinks, and other products sold throughout the United Network from Retail Suppliers as well as products sourced directly by the United Group, in quantities determined by UPF and UP ~~United Petroleum~~, to be sent to Franchisees and Commission Agents respectively to be sold (**Allocated Retail Stock**).

Particulars

- (a) *Particulars of the product types, quantities, cost, and dates of the Allocated Retail Stock allocated to FNH will be provided in evidence and following discovery.*
- (b) *Particulars of the product types, quantities, cost, and dates of the Allocated Retail Stock allocated to the JJ Trustees will be provided in evidence and following discovery.*

(bb) Particulars of the product types, quantities, cost, and dates of the Allocated Retail Stock allocated to Yug Sharma will be provided in evidence and following discovery.

(c) Particulars of the product types, quantities, cost, and dates of the Allocated Retail Stock allocated to Franchisees and Commission Agents will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.

90A Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, it was general business practice for Avi Silver to direct the United Petroleum Executive to issue Allocated Retail Stock (being retail stock such as confectionary, drinks, and other products sold throughout the United Network from Retail Suppliers as well as products sourced directly by the United Group), throughout the United Network, which included the sites of the Plaintiffs, and to direct that Franchisees and Commission Agents were to pay for the stock allocated to them.

Particulars

The directions were given orally by Avi Silver in Leadership Team Meetings.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

The directions were given by Avi Silver to David Szymczak, Chief Operating Officer of the United Group, and Gary Brinkworth, Chief Executive Officer

The substance of the directives were to allocate retail stock in the possession of United throughout the United Network and for Franchisees and Commission Agents to pay for the stock allocated to them.

The precise sites, the types of stock allocated and the amounts of each type of stock varied depending on the type of stock and quantity that United had purchased or manufactured, are not currently within the Plaintiffs' knowledge, and further particulars of the same will be provided following discovery.

90B Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, the United Petroleum Executive issued Allocated Retail Stock throughout the United Network upon the directions of Avi Silver as pleaded in paragraph 90A above.

Particulars

In accordance with the directions of Avi Silver, David Szymczak, Chief Operating Officer of the United Group, and Gary Brinkworth, Chief Executive Officer, would direct State Managers and Area Managers within the United Network to issue the Allocated Retail Stock.

FNH was allocated the Allocated Retail Stock on an ad hoc basis, at least monthly and often more frequently, depending on whether there was a promotion on particular retail stock or a large quantity of a particular stock produced or purchased by a company in the United Group.

The JJ Trustees were allocated the Allocated Retail Stock on an ad hoc basis, at least monthly and often more frequently, depending on whether there was a promotion on particular retail stock or a large quantity of a particular stock produced or purchased by a company in the United Group.

Yug Sharma was allocated the Allocated Retail Stock on an ad hoc basis, at least monthly and often more frequently, depending on whether there was a promotion on particular retail stock or a large quantity of a particular stock produced or purchased by a company in the United Group.

The precise sites, the types of stock allocated and the amounts of each type of stock are not currently within the Plaintiffs' knowledge, and further particulars of the same will be provided following discovery.

- 91 Franchisees and Commission Agents did not order the Allocated Retail Stock.
- 92 Franchisees and Commission Agents, including FNH and the JJ Trustees, had no control over the type or amount of the Allocated Retail Stock allocated to them by UPF and UP United Petroleum.
- 93 The Allocated Retail Stock received by Franchisees and Commission Agents was regularly 'short-dated' with a limited shelf during which the Allocated Retail Stock had to be sold before its expiry date.

Particulars

'Short-dated' means a product that is shortly due to pass its use-by date.

Particulars of the dates Allocated Retail Stock was received by Franchisees and Commission Agents and the expiry dates for that stock will be given in evidence and following discovery.

- 94 Franchisees and Commission Agents were required to pay Retail Suppliers for the

Allocated Retail Stock unless they received approval from their relevant area manager to refuse the Allocated Retail Stock.

Particulars

The requirement arises out of the directions issued by representatives of UPF and/or UP with respect to the Allocated Retail Stock, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

To the extent the directions were issued to Franchisees by representatives of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

94A Franchisees and Commission Agents had the cost of Allocated Retail Stock directly debited from their bank accounts by UPF and UP respectively.

Particulars

FNH, the JJ Trustees, and Yug Sharma all had amounts for Allocated Retail Stock deducted from their bank accounts on an ad hoc basis after that stock had been received.

Particulars of the amounts deducted by UPF and UP from the accounts of FNH, the JJ Trustees, and Yug Sharma will be given in evidence and following discovery.

95 During the Franchisee Relevant Period and Commission Agent Relevant Period, payment for Allocated Retail Stock that was not sold before the expiry date by Franchisees and Commission Agents was not reimbursed by UPF and UP respectively United Petroleum.

96 Retail stock including Allocated Retail Stock that was not sold by the expiry date by Franchisees and Commission Agents was disposed of and recorded as 'wastage' (**Retail Stock Wastage**).

Particulars

(a) *Particulars of the Retail Stock Wastage incurred by FNH will be provided in evidence and following discovery.*

(b) *Particulars of the Retail Stock Wastage incurred by the JJ Trustees will be provided in evidence and following discovery.*

(bb) Particulars of the Retail Stock Wastage incurred by Yug Sharma will be provided in evidence and following discovery.

(c) *Particulars of the Retail Stock Wastage incurred by Franchisees and*

Commission Agents will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.

97 The Retail Stock Wastage caused Franchisees and Commission Agents to suffer loss.

Particulars

(a) *Particulars of the costs of the Retail Stock Wastage incurred by FNH will be given in evidence.*

(b) *Particulars of the costs of the Retail Stock Wastage incurred by the JJ Trustees will be given in evidence.*

(bb) Particulars of the costs of the Retail Stock Wastage incurred by Yug Sharma will be given in evidence.

(c) *Particulars of the costs of the Retail Stock Wastage incurred by Franchisees and Commission Agents will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.*

97A Throughout the Franchisee Relevant Period and the Commission Agent Relevant Period, the Retail Stock Wastage was discussed at Leadership Team Meetings at which Avi Silver was present.

Particulars

The discussions regarding the Retail Stock Wastage occurred at Leadership Team Meetings on an ad hoc basis throughout the Franchisee Relevant Period and Commission Agent Relevant Period.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings occurred at least monthly, and at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays. Informal conferences would occur at the United Group head quarters in Hawthorn, Victoria.

The other members of the United Petroleum Executive with whom Avi Silver discussed the Retail Stock Wastage included David Szymczak, Chief Operating Officer of the United Group, Bruce Federoff, Pie Face Chief Executive Officer, and

Gary Brinkworth, Chief Executive Officer.

The substance of the discussions were that Franchisees and Commission Agents were not selling all the retail stock allocated to them by the expiry dates and were recording large amounts as wastage.

98 By reason of the SwiftPOS system, At all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ had access to information for sites in the United Network that recorded the actual amount of Allocated Retail Stock being sold by Franchisees and Commission Agents respectively.

Particulars

The Plaintiffs refer to and repeat paragraphs 66E – 66K above.

~~At all material times, United Petroleum had access to the "point of sale" system operated by all sites in the United Network, which system showed what stock was being sold by Franchisees in the United Network, including the Allocated Retail Stock.~~

99 By reason of the matters pleaded at paragraphs 66E to 66KKK, and 96 to 98 above and paragraph 100 below, at all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively were ~~United Petroleum~~ was in a position to assess whether or not Franchisees and Commission Agents respectively could reasonably be expected to sell the Allocated Retail Stock, and were actually selling the Allocated Retail Stock.

100 At all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP respectively ~~United Petroleum~~ had access to Wastage Reports by reason of the Swift POS system. ~~reports known as 'wastage reports' by Franchisees that recorded how much of the Allocated Retail Stock was being disposed of as wastage.~~

101 ~~At all material times during the Relevant Period, United Petroleum had access to profit and loss statements for Franchisees that demonstrated the detrimental effect of the Allocated Retail Stock on the business of Franchisees.~~

W. UPF's and UP's ~~United Petroleum's~~ obligation to comply with the Franchising Code

102 By reason of UPF and UP ~~United Petroleum~~ undertaking the installation of the Pie Face Franchise into Pie Face Sites, there was an implied agreement between UPF and UP ~~United Petroleum~~ on the one part and Franchisees and Commission Agents

respectively on the other part whereby UPF and UP United Petroleum granted to Franchisees and Commission Agents respectively the right to use the Pie Face Intellectual Property to sell Pie Face stock at Pie Face Sites (the **Implied Franchise Agreement**).

- 103 The Implied Franchise Agreement provided Franchisees and Commission Agents the right to carry on a business of offering and supplying goods in Australia (being Pie Face products) within the meaning of clause 5(1)(a)(iii) and clause 5(1)(b) of Schedule 1 to the *Competition and Consumer (Industry Codes—Franchising) Regulation 2014* (Cth) (**Franchising Code**).
- 104 By reason of the Pie Face Site Directions, the Pie Face Audits, and the Allocated Pie Face Stock, the right to carry on the business of offering and supplying Pie Face products granted by the Implied Franchise Agreement was the carrying on of a business under a system or marketing plan substantially determined, controlled, or suggested by UPF and UP United Petroleum within the meaning of clause 5(1)(b) of the Franchising Code.
- 105 The operation of the business of offering and supplying Pie Face products under the Implied Franchise Agreement was substantially or materially associated with the Pie Face Intellectual Property, being a trade mark, advertising or a commercial symbol: (i) owned, used or licensed by UPF and UP United Petroleum; or (ii) specified by UPF and UP United Petroleum within the meaning of clause 5(1)(c) of the Franchising Code.
- 106 Before starting or continuing the business of offering and supplying Pie Face stock under the Implied Franchise Agreement, Franchisees and Commission Agents had to agree to pay to UPF and UP respectively United Petroleum a fee, being an agreed payment within the meaning of clause 5(1)(d)(iii) of the Franchising Code.

Particulars

With respect to Franchisees, The agreement to pay a fee based on a percentage of average monthly gross revenue arises from clause 17.8 of the Franchise Agreement in circumstances where United Petroleum calculated the fee payable by Franchisees in part from revenue derived from the sale of Pie Face products.

With respect to Commission Agents, the agreement to pay UP a fee arises from the Licence Fee, which was calculated as a percentage of a Commission Agent's monthly sales.

- 107 By reason of the matters in paragraphs 102 to 106 above, the Implied Franchise Agreement was a *franchise agreement* within the meaning of the Franchising Code.

108 At all material times, the Franchising Code was an applicable industry code within the meaning of section 51ACB of the CCA in relation to the entry into the Implied Franchise Agreement by UPF and UP ~~United Petroleum~~.

109 By reason of the matters in paragraphs 102 to 106 above, UPF and UP ~~were~~ ~~United Petroleum~~ ~~was~~ required to create a Disclosure Document that complies with clause 8 of Division 2 of the Franchising Code (**Franchise Disclosure Document**).

110 The purpose of the Franchise Disclosure Document was to:

(a) give a prospective franchisee, or a franchisee proposing to:

(i) enter into a franchise agreement; or

(ii) renew a franchise agreement; or

(iii) extend the term or scope of a franchise agreement;

information from the franchisor to help the franchisee to make a reasonably informed decision about the franchise; and

(b) give a franchisee current information from the franchisor that is material to the running of the franchised business.

Particulars

Clause 8(2) of Schedule 1 to the Franchising Code.

111 The contents of the Franchise Disclosure Document were required to be in accordance with Annexure 1 to the Franchising Code.

Particulars

Clause 8(3) of Schedule 1 to the Franchising Code.

112 Pursuant to the Franchising Code, UPF and UP ~~United Petroleum~~ ~~was~~ ~~were~~ required to give Franchisees and Commission Agents respectively operating Pie Face Sites, at least 14 days before they enter into a franchise agreement (such as the Implied Franchise Agreement), or an agreement to enter into a franchise agreement (such as the Implied Franchise Agreement); or make a non-refundable payment (whether of money or of other valuable consideration) to UPF and UP ~~United Petroleum~~ or an associate of UPF and UP ~~United Petroleum~~ in connection with the proposed franchise agreement:

(a) a copy of the Franchising Code; and

(b) a copy of the Franchise Disclosure Document; and

(c) a copy of the franchise agreement, in the form in which it is to be executed.

Particulars

Clause 9 of Schedule 1 to the Franchising Code.

- 113 At no time during the Franchisee Relevant Period or Commission Agent Relevant Period did UPF or UP United Petroleum provide Franchisees and Commission Agents respectively operating Pie Face Sites with a copy of the Franchising Code or a Franchise Disclosure Document for the Implied Franchise Agreement ~~or a copy of the Implied Franchise Agreement~~, in the form in which it is to be executed.
- 114 By reason of UPF and UP United Petroleum failing to provide Franchisees and Commission Agents respectively operating Pie Face Sites with a copy of the Franchising Code and the Franchise Disclosure Document for the Implied Franchise Agreement ~~or a copy of the Implied Franchise Agreement~~, in the form in which it is to be executed, UPF and UP United Petroleum breached the Franchise Code and thereby contravened section 51ACB of the CCA (a **Franchising Code Breach**).
- 115 Pursuant to the Franchising Code, each of UPF and UP United Petroleum was not to:
- (a) enter into a franchise agreement (such as the Implied Franchise Agreement);
 - or
 - (b) receive a non-refundable payment (whether of money or of other valuable consideration) under a franchise agreement (such as the Implied Franchise Agreement);
- unless UPF and UP United Petroleum had received from a franchisee or prospective franchisee a written statement that the franchisee or prospective franchisee had received, read and had a reasonable opportunity to understand the Franchise Disclosure Document and the Franchising Code.

Particulars

Clause 10(1) of Schedule 1 to the Franchising Code.

- 116 At no time prior to entering an Implied Franchise Agreement with a Franchisee or Commission Agent or prospective Franchisee or Commission Agent who operated or was to operate a Pie Face Site, or receiving non-refundable payments from franchisees who operated Pie Face Sites under an Implied Franchise Agreement, did UPF or UP United Petroleum receive from Franchisees or Commission Agents respectively a written statement that the Franchisee or Commission Agent had received, read and had a reasonable opportunity to understand the Franchise Disclosure Document and the Franchising Code.
- 117 By entering into Implied Franchise Agreements with Franchisees and Commission

Agents who operated or were to operate a Pie Face Site without receiving a written statement that those Franchisees and Commission Agents had received, read, and had a reasonable opportunity to understand the Franchise Disclosure Document and the Franchising Code, UPF and UP ~~United Petroleum~~ breached the Franchising Code and thereby contravened section 51ACB of the CCA (also a **Franchising Code Breach**).

118 Pursuant to clause 10(2) of the Franchising Code, before a franchise agreement (such as the Implied Franchise Agreement) is entered into, UPF and UP respectively were ~~United Petroleum~~ was required to have received from the prospective franchisee:

(a) signed statements, that the prospective franchisee has been given advice about the proposed franchise agreement or franchised business, by:

(i) an independent legal adviser; or

(ii) an independent business adviser; or

(iii) an independent accountant; or

(b) for each kind of statement not received under paragraph (a), a signed statement by the prospective franchisee that the prospective franchisee:

(i) has been given that kind of advice about the proposed franchise agreement of franchised business; or

(ii) has been told that that kind of advice should be sought but has decided not to seek it,

(together, the **Clause 10(2) Statements**).

119 At no time during the Franchisee Relevant Period or Commission Agent Relevant Period, prior to entering Implied Franchise Agreements with Franchisees and Commission Agents was UPF or UP respectively ~~United Petroleum~~ provided with Clause 10(2) Statements by those Franchisees and Commission Agents.

120 By entering into Implied Franchise Agreements with Franchisees and Commission Agents without being provided with Clause 10(2) Statements by those Franchisees and Commission Agents, UPF and UP ~~United Petroleum~~ breached the Franchising Code and contravened section 51ACB of the CCA (also a **Franchising Code Breach**).

121 Pursuant to the Franchising Code, UPF and UP respectively were ~~United Petroleum~~ was required to give a copy of the information statement set out in Annexure 2 of the Franchising Code to prospective franchisees.

Particulars

Clause 11 of Schedule 1 to the Franchising Code.

- 122 At no time during the Franchisee Relevant Period or Commission Agent Relevant Period, prior to entering into Implied Franchise Agreements, did UPF or UP United Petroleum provide Franchisees and Commission Agents respectively with the information statement set out in Annexure 2 of the Franchising Code.
- 123 By entering into Implied Franchise Agreements with Franchisees and Commission Agents without providing those Franchisees and Commission Agents with the information statement set out in Annexure 2 of the Franchising Code, UPF and UP United Petroleum breached the Franchising Code and thereby contravened s 51ACB of the Franchising Code (also a **Franchising Code Breach**).
- 123A But for the breaches pleaded in paragraphs 114, 117, 120, and 123 (the Franchising Code Breaches), individually or together, FNH and Mr Istanikzai would not have entered into the FNH Franchise Agreement as Franchisee and Guarantor respectively.
- 123B But for the Franchising Code Breaches, the JJ Trustees would not have entered into the JJ Franchise Agreement in their capacities as Franchisees and Guarantors.
- 123BB But for the Franchising Code Breaches, Yug Sharma would not have entered into the Yug Sharma Agreement as Commission Agent.
- 123C But for the Franchising Code Breaches, Franchisees and Commission Agents who operated Pie Face Sites, and Guarantors who guaranteed the obligations of those Franchisees and Commission Agents, would not have entered into their Franchise Agreements and Commission Agency Agreements in their capacity as Franchisees, Commission Agents, and Guarantors.

X. Oilcode Disclosure Documents

X.1 UPF's and UP's United Petroleum's Disclosure Document obligations under the Oilcode 2006 and Oilcode 2017

- 124 Further or alternatively, each Franchise Agreement and Commission Agency Agreement and ~~Implied Franchise Agreement~~ was a fuel re-selling agreement within the meaning of the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* (Cth) (**Oilcode 2006**) (as in force prior to 1 April 2017) and *Competition and Consumer (Industry Codes—Oil) Regulations 2017* (Cth) (**Oilcode 2017**) (as in force from 1 April 2017).
- ~~125 Prior to 1 January 2015, the Oilcode 2006 was a mandatory industry code relating to franchising and an applicable industry code within the meaning of section 51AD of the CGA (as then in force) in relation to the entry by United Petroleum into any Franchise Agreement and Implied Franchise Agreement.~~

- 126 Between 1 January 2015 to 1 April 2017, the Oilcode 2006 was a mandatory industry code relating to franchising and an applicable industry code within the meaning of section 51ACB of the CCA (as then in force) in relation to the entry by UPF and UP United Petroleum into any Franchise Agreement and Commission Agency Agreement and Implied Franchise Agreement.
- 127 From 1 April 2017, the Oilcode 2017 was a mandatory industry code relating to franchising and an applicable industry code within the meaning of section 51ACB of the CCA in relation to the entry by UPF and UP United Petroleum into any Franchise Agreement and Commission Agency Agreement respectively and Implied Franchise Agreement.
- 128 At all relevant times, UPF and UP were United Petroleum was required to create a Disclosure Document that complies with Subdivision A of the Oilcode 2006 (being a Disclosure Document within the meaning of the Oilcode 2006) or the Oilcode 2017 (being a Disclosure Document within the meaning of the Oilcode 2017) (**Oilcode Disclosure Document**).

Particulars

Clause 13 of Schedule 1 of the Oilcode 2006.

Clause 13 of Schedule 1 of the Oilcode 2017.

- 129 The purpose of an Oilcode Disclosure Document prepared in accordance with Subdivision A of the Oilcode 2006 and Subdivision A of the Oilcode 2017 is:
- (a) to allow a supplier to give a person adequate information to help the retailer make a reasonably informed decision about an agreement; or
 - (b) to give a retailer current information that is relevant to the operation of the retailer's retail business.

Particulars

Clause 14 of Schedule 1 of the Oilcode 2006.

Clause 14 of Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or prospective Franchisee or Commission Agent.

- 130 At all relevant times, UPF and UP were United Petroleum was required to give its current Oilcode Disclosure Document to a person who proposes to the supplier to

become a retailer in relation to the supplier, or a person to whom the supplier has consented to be the transferee in relation to a fuel re-selling agreement.

Particulars

Clause 16 of Schedule 1 of the Oilcode 2006.

Clause 16 of Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires ~~United Petroleum~~.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

- 131 At all material times, UPF and UP were ~~United Petroleum was~~ required to prepare an updated Oilcode Disclosure Document in relation to any Franchise Agreement and Commission Agency Agreement respectively and ~~Implied Franchise Agreement~~ that was in force at the end of a financial year, and do so not later than 3 months after the end of the financial year.

Particulars

Clause 13(2) of Schedule 1 of the Oilcode 2006.

Clause 13(2) of Schedule 1 of the Oilcode 2017.

X.2. Content of the Disclosure Document – Long Form

- 132 For those Franchise Agreements and Commission Agency Agreements and ~~Implied Franchise Agreements~~ that specified a duration of at least 5 years, the Oilcode Disclosure Document:

- (a) must be in accordance with Annexure 1; and
- (b) must be in the form, in the order, and with the numbering, set out in Annexure 1; and
- (c) must use the same titles as in Annexure 1 (**Long Form Oilcode Disclosure Document**).

Particulars

Clause 15(1) of Schedule 1 of the Oilcode 2006.

Clause 15(1) of Schedule 1 of the Oilcode 2017.

- 133 For any trade mark used to identify, and for any patent, design or copyright that is significant and material to, the fuel re-selling agreement (defined as the *intellectual*

property), the Long Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United Petroleum~~ required it to contain:

- (a) a description of the intellectual property; and
- (b) details of the retailer's rights and obligations in connection with the use of the intellectual property; and
- (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
- (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
 - (i) name of court or tribunal; and
 - (ii) matter number; and
 - (iii) summary of the claim or judgment; and
- (e) if the intellectual property is not owned by the supplier — who owns it; and
- (f) details of any agreement that significantly affects the supplier's rights to use, or to give others the right to use, the intellectual property, including:
 - (i) the parties to the agreement; and
 - (ii) the nature and extent of any limitation; and
 - (iii) the duration of the agreement; and
 - (iv) the conditions under which the agreement may be terminated.

Particulars

Clause 7.1 of Annexure 1 to Schedule 1 of the Oilcode 2006.

Clause 7.1 of Annexure 1 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires ~~United Petroleum~~.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

- 134 For the supplier's requirements for supply of goods or services to a retailer, the Long Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United Petroleum~~ required it to disclose details of any requirement for the retailer to maintain a level of inventory or acquire an amount of goods or services.

Particulars

Clause 9.1(a) of Annexure 1 to Schedule 1 of the Oilcode 2006.

Clause 9.1(a) of Annexure 1 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

- 135 For the supplier's requirements for supply of goods or services to a retailer, the Long Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United Petroleum~~ required it to disclose details of ownership by the supplier or an associate of the supplier of an interest in any supplier from which the retailer may be required to acquire goods or services.

Particulars

Clause 9.1(c) of Annexure 1 to Schedule 1 of the Oilcode 2006.

Clause 9.1(c) of Annexure 1 to Schedule 1 of the Oilcode 2017.

The initial reference to a supplier is a reference to UPF or UP as the context requires United Petroleum, while "any supplier" is a reference to any supplier of goods or services.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

- 136 For the supplier's requirements for the supply of goods or services to a retailer, the Long Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United Petroleum~~ required it to disclose details of the obligation of the retailer to accept goods or services from the supplier.

Particulars

Clause 9.1(d) of Annexure 1 to Schedule 1 of the Oilcode 2006.

Clause 9.1(d) of Annexure 1 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

- 137 For the supplier's requirements for the supply of goods or services to a retailer, the Long Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United~~

~~Petroleum~~ required it to disclose details of whether the supplier may change the range of goods or services, and if so, to what extent.

Particulars

Clause 9.1(i) of Annexure 1 to Schedule 1 of the Oilcode 2006.

Clause 9.1(i) of Annexure 1 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

138 The Long Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United Petroleum~~ required it to contain a summary of the conditions of the fuel re-selling agreement that deal with obligations of a retailer (or references to the relevant conditions of the fuel re-selling agreement) for, *inter alia*, the following matters:

- (a) training before and during operating the fuel re-selling business;
- (b) complying with standards or operating manuals;
- (c) using intellectual property;
- (d) marketing;
- (e) participation requirements for retailer, directors, management or employees; and
- (f) inspections and audit.

Particulars

Clauses 16.1 (d), (f), (g), (l), (n), and (p) of Annexure 1 to Schedule 1 of the Oilcode 2006.

Clauses 16.1 (d), (f), (g), (n), and (p) of Annexure 1 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

X.3 Content of the Oilcode Disclosure Document – Short Form

139 For those Franchise Agreements and Commission Agency Agreements ~~and Implied Franchise Agreements~~ that specified a duration of less than 5 years, the

Oilcode Disclosure Document:

- (a) must be in accordance with Annexure 2; and
- (b) must be in the form, in the order, and with the numbering, set out in Annexure 2; and
- (c) must use the same titles as in Annexure 2, (**Short Form Oilcode Disclosure Document**).

Particulars

Clause 15(2) of Schedule 1 of the Oilcode 2006.

Clause 15(2) of Schedule 1 of the Oilcode 2017.

140 For any trade mark used to identify, and for any patent, design or copyright that is significant and material to, the fuel re-selling agreement (defined as the **intellectual property**), the Short Form Oilcode Disclosure Document required to be kept by UPF and UP ~~United Petroleum~~ required it to contain:

- (a) a description of the intellectual property; and
- (b) details of the retailer's rights and obligations in connection with the use of the intellectual property; and
- (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
- (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
 - (i) name of court or tribunal; and
 - (ii) matter number; and
 - (iii) summary of the claim or judgment; and
- (e) if the intellectual property is not owned by the supplier — who owns it; and
- (f) details of any agreement that significantly affects the supplier's rights to use, or to give others the right to use, the intellectual property, including:
 - (i) the parties to the agreement; and
 - (ii) the nature and extent of any limitation; and
 - (iii) the duration of the agreement; and
 - (iv) the conditions under which the agreement may be terminated.

Particulars

Clause 4.1 of Annexure 2 to Schedule 1 of the Oilcode 2006.

Clause 4.1 of Annexure 2 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

141 The Short Form Oilcode Disclosure Document required to be kept by UPF and UP United Petroleum was required to contain a summary of the conditions of the fuel re-selling agreement that deal with obligations of a retailer (or references to the relevant conditions of the fuel re-selling agreement) for, *inter alia*, the following matters:

- (a) training before and during operating the fuel re-selling business;
- (b) complying with standards or operating manuals;
- (c) using intellectual property;
- (d) marketing;
- (e) participation requirements for the retailer, directors, management or employees; and
- (f) inspections and audit.

Particulars

Clauses 9.1 (d), (f), (g), (l), (n), and (p) of Annexure 2 to Schedule 1 of the Oilcode 2006.

Clauses 9.1 (d), (f), (g), (n), and (p) of Annexure 2 to Schedule 1 of the Oilcode 2017.

A reference to a supplier is a reference to UPF or UP as the context requires United Petroleum.

A reference to a retailer is a reference to a Franchisee or Commission Agent or prospective Franchisee or Commission Agent.

X.4 Associates of UPF and UP United Petroleum

142 Eddie Hirsch was at all material times during the Franchisee Relevant Period and Commission Agent Relevant Period an associate of UPF and UP United Petroleum within the meaning of clause 4 of Schedule 1 to the Oilcode 2006 and clause 4 of Schedule 1

to the Oilcode 2017.

Particulars

Eddie Hirsch:

- (a) *is a director of UPF and UP United Petroleum; and*
- (b) *directly or indirectly owns, controls, or holds with power to vote, at least 15% of the issued voting shares in UPF and UP United Petroleum.*

143 Avi Silver was at all material times during the Franchisee Relevant Period and Commission Agent Relevant Period an associate of UPF and UP United Petroleum within the meaning of clause 4 of Schedule 1 to the Oilcode 2006 and clause 4 of Schedule 1 to the Oilcode 2017.

Particulars

Avi Silver:

- (a) *is a director of UPF and UP United Petroleum; and*
- (b) *directly or indirectly owns, controls, or holds with power to vote, at least 15% of the issued voting shares in UPF and UP United Petroleum.*

144 At all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, Eddie Hirsch had an indirect interest in Pie Face Bakery Pty Ltd (**Pie Face Bakery**).

Particulars

- (a) *Pie Face Pty Ltd (ACN 109 372 358) is a wholly-owned subsidiary of Pie Face International Pty Ltd, a company whose shareholders include Pribay, a company of which Eddie Hirsch is the sole director, secretary, and shareholder, holding 6 ordinary shares in Pie Face International Pty Ltd.*
- (b) *Pie Face Bakery is a wholly-owned subsidiary of Pie Face Pty Ltd.*

145 At all material times during the Franchisee Relevant Period and Commission Agent Relevant Period, Avi Silver had an indirect interest in Pie Face Bakery.

Particulars

- (a) *Pie Face Pty Ltd (ACN 109 372 358) is a wholly-owned subsidiary of Pie Face International Pty Ltd, a company whose shareholders include Agtan, a company of which Avi Silver is the sole director, secretary, and shareholder, holding 6 ordinary shares in Pie Face International Pty Ltd.*
- (b) *Pie Face Bakery is a wholly-owned subsidiary of Pie Face Pty Ltd.*

X.5 Contraventions of the Oilcode – Long Form Oilcode Disclosure Document

146 In contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of Schedule 1 of the Oilcode 2017, the Long Form Oilcode Disclosure Document required to be maintained by UPF and UP ~~United Petroleum~~ during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not disclose (each of the contraventions in paragraphs 146-152 being a **Long Form Oilcode Disclosure Omission**):

- (a) a description of the Pie Face Intellectual Property;
- (b) details of a Franchisee's or Commission Agent's rights and obligations in connection with the use of the Pie Face Intellectual Property; and
- (c) whether the Pie Face Intellectual Property is registered in Australia, and if so, the registration date, registration number and place of registration; and
- (d) any judgment or pending proceedings that could significantly affect ownership or use of the Pie Face Intellectual Property, including:
 - (i) name of court or tribunal; and
 - (ii) matter number; and
 - (iii) summary of the claim or judgment; and
- (e) if the Pie Face Intellectual Property was not owned by UPF or UP ~~United Petroleum~~ — who owns it; and
- (f) details of any agreement that significantly affects UPF's or UP's ~~United Petroleum~~ rights to use, or to give others the right to use, the Pie Face Intellectual Property, including:
 - (i) the parties to the agreement; and
 - (ii) the nature and extent of any limitation; and
 - (iii) the duration of the agreement; and
 - (iv) the conditions under which the agreement may be terminated.

Particulars

Particulars of the Long Form Oilcode Disclosure Document maintained by UPF and UP ~~United Petroleum~~ during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

147 In contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of

Schedule 1 of the Oilcode 2017, the Long Form Oilcode Disclosure Document required to be maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not disclose details of any requirement for a Franchisee or Commission Agent to maintain or acquire the Allocated Retail Stock or the Allocated Pie Face Stock.

Particulars

Particulars of the Long Form Oilcode Disclosure Document maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

- 148 In contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of Schedule 1 of the Oilcode 2017, the Long Form Oilcode Disclosure Document required to be maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not disclose details of ownership by UPF or UP United Petroleum or an associate of UPF or UP United Petroleum, such as Eddie Hirsch and Avi Silver, of an interest in Pie Face Pty Ltd and Pie Face Bakery, being a supplier of products from which a Franchisee or Commission Agent may be required to acquire goods or services, such as the Allocated Pie Face Stock.

Particulars

Particulars of the Long Form Oilcode Disclosure Document maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

- 149 In contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of Schedule 1 of the Oilcode 2017, the Long Form Oilcode Disclosure Document required to be maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not disclose details of the obligation of a Franchisee or Commission Agent to maintain a level of inventory or acquire an amount of goods or services, such as the Allocated Retail Stock and the Allocated Pie Face Stock.

Particulars

Particulars of the Long Form Oilcode Disclosure Document maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following

discovery.

150 In contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of Schedule 1 of the Oilcode 2017, the Long Form Oilcode Disclosure Document required to be maintained by UPF and UP ~~United Petroleum~~ during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not disclose details of whether UPF or UP ~~United Petroleum~~ may change the range of goods or services supplied to Franchisees or Commission Agents respectively, which UPF and UP ~~United Petroleum~~ did by means of the Allocated Retail Stock and the Allocated Pie Face Stock.

Particulars

Particulars of the Long Form Oilcode Disclosure Document maintained by UPF and UP ~~United Petroleum~~ during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

151 In contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of Schedule 1 of the Oilcode 2017, the Long Form Oilcode Disclosure Document required to be maintained by UPF and UP ~~United Petroleum~~ during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not contain a summary of the conditions of the fuel re-selling agreement that deal with obligations of a Franchisee or Commission Agent (or references to the relevant conditions of the fuel re-selling agreement) for, *inter alia*, the following matters:

- (a) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to have its employees train in the handling, retailing, merchandising, and sale of Pie Face products during operation of the fuel re-selling business;
- (b) the requirement for a Franchisee or Commission Agent to comply with standards and operating manuals with respect to the handling, retailing, merchandising, and sale of Allocated Retail Stock;
- (c) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to comply with standards and operating manuals with respect to the handling, retailing, merchandising, and sale of Pie Face stock, including but not limited to the Allocated Pie Face Stock;
- (d) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to use the Pie Face Intellectual Property;

- (e) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to engage in marketing of Pie Face products;
- (f) participation requirements for a Franchisee or Commission Agent operating a Pie Face Site in the handling, retailing, merchandising, and sale of Pie Face products for the Franchisee or Commission Agent, its directors, management or employees, including compliance with the Pie Face Store Directions and the need to employ Pie Face Team Members; and
- (g) inspections and audits of a Franchisee or Commission Agent operating a Pie Face Site, including but not limited to the Pie Face Audits.

Particulars

Particulars of the Long Form Oilcode Disclosure Document maintained by UPF and UP ~~United Petroleum~~ during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

152 In contravention of clause 13(2) of Schedule 1 to the Oilcode 2006, and in contravention of clause 13(2) of Schedule 1 to the Oilcode 2017, UPF and UP respectively ~~United Petroleum~~ failed to prepare an updated Long Form Oilcode Disclosure Document in relation to Franchise Agreements and Commission Agency Agreements ~~and Implied Franchise Agreements~~ that were in force at the end of a financial year.

153 By reason of UPF's and UP's ~~United Petroleum~~ failure to prepare an updated Long Form Oilcode Disclosure Document in relation to Franchise Agreements and Commission Agency Agreements ~~and Implied Franchise Agreements~~ that were in force at the end of a financial year, UPF and UP ~~United Petroleum~~ engaged in the Long Form Oilcode Disclosure Omissions pleaded at paragraphs 146 to 152 above each year that UPF and UP ~~United Petroleum~~ failed to prepare an updated Long Form Oilcode Disclosure Document.

~~154 In the premises of paragraphs 146 to 152 above, United Petroleum breached section 51AD of the CCA (as then in force).~~

155 In the premises of paragraphs 146 to 152 above, UPF and UP ~~United Petroleum~~ breached section 51ACB of the CCA.

X.6 Contraventions of the Oilcode – Short Form Oilcode Disclosure Document

156 In contravention of clause 15(2) of Schedule 1 of the Oilcode 2006, and clause 15(2) of Schedule 1 of the Oilcode 2017, the Short Form Oilcode Disclosure Document required to be maintained by UPF and UP ~~United Petroleum~~ during the Franchisee

Relevant Period and Commission Agent Relevant Period respectively did not disclose (each of the contraventions in paragraphs 156-158 being a **Short Form Oilcode Disclosure Omission**):

- (a) a description of the Pie Face Intellectual Property;
- (b) details of a Franchisee's rights and obligations in connection with the use of the Pie Face Intellectual Property;
- (c) whether the Pie Face Intellectual Property is registered in Australia, and if so, the registration date, registration number and place of registration;
- (d) any judgment or pending proceedings that could significantly affect ownership or use of the Pie Face Intellectual Property, including:
 - (i) name of court or tribunal; and
 - (ii) matter number; and
 - (iii) summary of the claim or judgment;
- (e) if the Pie Face Intellectual Property was not owned by UPF or UP United Petroleum — who owns it; and
- (f) details of any agreement that significantly affects UPF's or UP's United Petroleum's rights to use, or to give others the right to use, the Pie Face Intellectual Property, including:
 - (i) the parties to the agreement;
 - (ii) the nature and extent of any limitation;
 - (iii) the duration of the agreement; and
 - (iv) the conditions under which the agreement may be terminated.

Particulars

Particulars of the Short Form Oilcode Disclosure Document maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

157 In contravention of clause 15(2) of Schedule 1 of the Oilcode 2006, and clause 15(2) of Schedule 1 of the Oilcode 2017, the Short Form Oilcode Disclosure Document required to be maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period respectively did not contain a summary of the conditions of the fuel re-selling agreement that dealt with obligations of a

Franchisee or Commission Agent respectively (or references to the relevant conditions of the fuel re-selling agreement) for, *inter alia*, the following matters:

- (a) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to have its employees train in the handling, retailing, merchandising, and sale of Pie Face products during operation of the fuel re-selling business;
- (b) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to comply with standards and operating manuals with respect to the handling, retailing, merchandising and sale of Pie Face products;
- (c) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to use the Pie Face Intellectual Property;
- (d) the requirement for a Franchisee or Commission Agent operating a Pie Face Site to engage in Pie Face marketing;
- (e) for all Franchisees and Commission Agents, participation requirements for the Franchisee or Commission Agent, directors, management or employees in the retailing and sale of the Allocated Retail Stock;
- (f) for Franchisees and Commission Agents operating Pie Face Sites, participation requirements for the Franchisee or Commission Agent, directors, management or employees in the retailing and sale of the Allocated Pie Face Stock; and
- (g) inspections and audits of a Franchisee or Commission Agent operating a Pie Face Site in relation to compliance with the Pie Face Site Directions, including but not limited to the Pie Face Audits.

Particulars

Further particulars of the Short Form Oilcode Disclosure Document maintained by UPF and UP United Petroleum during the Franchisee Relevant Period and Commission Agent Relevant Period will be given in evidence and following discovery.

158 In contravention of clause 13(2) of Schedule 1 to the Oilcode 2006, and in contravention of clause 13(2) of Schedule 1 to the Oilcode 2017, UPF and UP United Petroleum failed to prepare an updated Short Form Oilcode Disclosure Document in relation to Franchise Agreements and Commission Agency Agreements respectively and Implied Franchise Agreements that were in force at the end of a financial year.

- 159 By reason of UPF's and UP's United Petroleum's failure to prepare an updated Short Form Oilcode Disclosure Document in relation to Franchise Agreements and Commission Agency Agreements respectively ~~and Implied Franchise Agreements~~ that were in force at the end of a financial year, UPF and UP ~~United Petroleum~~ engaged in the Short Form Oilcode Disclosure Omissions pleaded at paragraphs 156 to 158 above each year that UPF and UP ~~United Petroleum~~ failed to prepare an updated Short Form Oilcode Disclosure Document.
- ~~160 In the premises of paragraphs 156 to 158 above, United Petroleum breached section 51AD of the CCA (as then in force).~~
- 161 In the premises of paragraphs 156 to 158 above, UPF and UP ~~United Petroleum~~ breached section 51ACB of the CCA.
- 161A But for the Short Form Oilcode Disclosure Omissions, FNH and Mr Istanikzai would not have entered into the FNH Franchise Agreement as Franchisee and Guarantor respectively.
- 161B But for the Short Form Oilcode Disclosure Omissions, the JJ Trustees would not have entered into the JJ Franchise Agreement as Franchisees and Guarantors.
- 161BB But for the Short Form Oilcode Disclosure Omissions, Yug Sharma would not have entered into the Yug Sharma Agreement as Commission Agent.
- 161C But for the Short Form Oilcode Disclosure Omissions, Franchisees and Commission Agents who operated Pie Face Sites, and Guarantors who guaranteed the obligations of those Franchisees and Commission Agents, would not have entered into their Franchise Agreements and Commission Agency Agreements as Franchisees, Commission Agents, and Guarantors respectively.
- 161C But for the Long Form Oilcode Disclosure Omissions, Franchisees and Commission Agents who operated Pie Face Sites, and Guarantors who guaranteed the obligations of those Franchisees and Commission Agents, would not have entered into their Franchise Agreements and Commission Agency Agreements as Franchisees, Commission Agents, and Guarantors respectively.

Y. Misleading or Deceptive Conduct

Y.1 Original Pie Face Profitable Franchise Representation

- 162 By consenting to the installation of ~~installing~~ the Pie Face Franchise into sites in the United Network during the Franchisee Relevant Period and Commission Agent Relevant Period respectively,
- (a) UPF ~~United Petroleum~~ represented to Franchisees and Guarantors of those

Franchisees; and

- (b) UP represented to Commission Agents, and Guarantors of those Commission Agents.

that the Pie Face Franchise was a profitable franchise at the time that it was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by the United Group (**the Original Pie Face Profitable Franchise Representation**).

Particulars

- (a) As UPF was the contractual counterparty for Franchisees, it can be inferred that the installation of the Pie Face Franchise into Franchisee sites in the United Network was with the knowledge and consent of UPF.
- (b) As UP was the contractual counterparty for Commission Agents, it can be inferred that the installation of the Pie Face Franchise into Commission Agent sites in the United Network was with the knowledge and consent of UP.
- (c) *The Original Pie Face Profitable Franchise Representation was implied in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would assume from the conduct of UPF and/or UP ~~United Petroleum~~ in undertaking installations of the Pie Face Franchise into sites in the United Network that the Pie Face Franchise was historically a profitable franchise at the time that it was being franchised by Original Pie Face.*
- (d) *Further or in the alternative, the Original Pie Face Profitable Franchise Representation was conveyed by silence when UPF and/or UP ~~United Petroleum~~ undertook installations of the Pie Face Franchise into sites in the United Network, however failed to disclose and remained silent as to the financial history of the Pie Face Franchise at the time that it was being franchised by Original Pie Face in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would expect that information to be disclosed.*

163 The Original Pie Face Profitable Franchise Representation was made in trade or commerce within the meaning of section 18 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

- (a) section 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);

- (b) section 28 of the *Fair Trading Act 1987* (NSW);
- (c) section 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
- (d) section 26 of the *Fair Trading Act 1989* (Qld);
- (e) section 19 of the *Fair Trading Act 2010* (WA);
- (f) section 14 of the *Fair Trading Act 1987* (SA);
- (g) section 27 of the *Consumer Affairs and Fair Trading Act* (NT);
- (h) section 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or
- (i) section 131 of the *Competition and Consumer Act 2010* (Cth), (individually or together the **ACL**).

164 The Original Pie Face Profitable Franchise Representation was a continuing representation throughout the Franchisee Relevant Period and Commission Agent Relevant Period.

165 The Original Pie Face Profitable Franchise Representation was misleading or deceptive or likely to mislead or deceive.

166 The Pie Face Franchise was not ~~historically~~ a profitable franchise at the time that it was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by the United Group.

Particulars

- (a) *The Plaintiffs refer to the matters pleaded in paragraphs 15-19 to 48 above.*
- (b) *Further particulars of the profitability of the Pie Face Franchise at the time it was acquired by the United Group will be given ~~in evidence and~~ following discovery.*

167 By making the Original Pie Face Profitable Franchise Representation, UPF and/or UP United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.2 Future Pie Face Profitable Franchise Representation

168 By consenting to the installation of ~~installing~~ the Pie Face Franchise into sites in the United Network during the Franchisee Relevant Period and Commission Agent Relevant Period respectively,

- (a) UPF United Petroleum represented to Franchisees and Guarantors of those Franchisees; and
- (b) UP represented to Commission Agents, and Guarantors of those Commission Agents,

that the Pie Face Franchise ~~being franchised to them by United Petroleum would~~ could

be a profitable franchise (**the Future Pie Face Profitable Franchise Representation**).

Particulars

- (a) As UPF was the contractual counterparty for Franchisees, it can be inferred that the installation of the Pie Face Franchise into Franchisee sites in the United Network was with the knowledge and consent of UPF.
- (b) As UP was the contractual counterparty for Commission Agents, it can be inferred that the installation of the Pie Face Franchise into Commission Agent sites in the United Network was with the knowledge and consent of UP.
- (c) *The Future Pie Face Profitable Franchise Representation was implied in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would assume from the conduct of UPF and/or UP ~~United Petroleum~~ in undertaking installations of the Pie Face Franchise into sites in the United Network that the Pie Face Franchise could ~~would~~ be a profitable franchise.*
- (d) *Further or in the alternative, the Future Pie Face Profitable Franchise Representation was conveyed by silence when UPF and/or UP ~~United Petroleum~~ undertook installations of the Pie Face Franchise into sites in the United Network, however failed to disclose and remained silent as to the financial history of the Pie Face Franchise at the time that it was being franchised by Original Pie Face as pleaded in paragraphs 15 ~~19~~ to 48 above in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would expect that information to be disclosed.*
- (e) *Further or in the alternative, the Future Pie Face Profitable Franchise Representation was conveyed by silence when UPF and/or UP ~~United Petroleum~~ undertook installations of the Pie Face Franchise into sites in the United Network, however failed to disclose and remained silent as to the actual predicted profitability of the Pie Face Franchise proposed to be franchised by UPF and/or UP ~~United Petroleum~~ in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would expect that information to be disclosed.*

169 The Future Pie Face Profitable Franchise Representation was made in trade or commerce within the meaning of section 18 of the ACL.

170 The Future Pie Face Profitable Franchise Representation was a continuing representation throughout the Franchisee Relevant Period and Commission Agent

Relevant Period.

- 171 The Future Pie Face Profitable Franchise Representation was a representation as to future matter.
- 172 There were no reasonable grounds to represent that the Pie Face Franchise would in future be a profitable franchise.

Particulars*The Plaintiffs rely on the presumption in section 4 of the ACL.*

- 173 The Future Pie Face Profitable Franchise Representation was misleading or deceptive or likely to mislead or deceive.
- 174 By making the Future Pie Face Profitable Franchise Representation, UPF and/or UP United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.3 Original Pie Face Market Demand Representation

- 175 By consenting to the installation of installing the Pie Face Franchise into sites in the United Network during the Franchisee Relevant Period and Commission Agent Relevant Period respectively,
- (a) UPF United Petroleum represented to Franchisees and Guarantors of those Franchisees; and
- (b) UP represented to Commission Agents, and Guarantors of those Commission Agents,

that there was strong market demand for Pie Face products at the time that the Pie Face Franchise was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by a member of the United Group (**the Original Pie Face Market Demand Representation**).

Particulars

- (a) *As UPF was the contractual counterparty for Franchisees, it can be inferred that the installation of the Pie Face Franchise into Franchisee sites in the United Network was with the knowledge and consent of UPF.*
- (b) *As UP was the contractual counterparty for Commission Agents, it can be inferred that the installation of the Pie Face Franchise into Commission Agent sites in the United Network was with the knowledge and consent of UP.*

- (c) *The Original Pie Face Market Demand Representation was implied in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would assume from the conduct of UPF and/or UP ~~United Petroleum~~ in undertaking installations of the Pie Face Franchise into sites in the United Network that there was strong market demand for Pie Face products at the time that the Pie Face Franchise was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by a member of the United Group.*
- (d) *Further or in the alternative, the Pie Face Market Demand Representation was conveyed by silence when UPF and/or UP ~~United Petroleum~~ undertook installations of the Pie Face Franchise into sites in the United Network, however failed to disclose and remained silent as to the true market demand for Pie Face products at the time that the Pie Face Franchise was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by a member of the United Group ~~United Petroleum or an associate of United Petroleum~~ in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would expect that information to be disclosed.*

- 176 The Original Pie Face Market Demand Representation was made in trade or commerce within the meaning of section 18 of the ACL.
- 177 The Original Pie Face Market Demand Representation was a continuing representation throughout the Franchisee Relevant Period and Commission Agent Relevant Period.
- 178 The Original Pie Face Market Demand Representation was misleading or deceptive or likely to mislead or deceive.
- 179 There was not strong market demand for Pie Face products at the time that the Pie Face Franchise was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by a member of the United Group.

Particulars

- (a) *The Plaintiffs refer to the matters pleaded in paragraphs 15 49 to 48 above.*
- (b) *Further particulars of the market demand for Pie Face products will be given ~~in evidence and~~ following discovery.*
- 180 By making the Original Pie Face Market Demand Representation, UPF and/or UP ~~United Petroleum~~ engaged in conduct in contravention of section 18 of the ACL.

Y.4 Future Pie Face Market Demand Representation

181 By installing the Pie Face Franchise into sites in the United Network during the Franchisee Relevant Period and Commission Agent Relevant Period, or consenting to such installation, UPF and/or UP United Petroleum represented to Franchisees and Commission Agents, and Guarantors of those Franchisees and Commission Agents, that there would be strong market demand for Pie Face products on and from the time that the Pie Face Franchise was installed throughout the United Network ~~being franchised by United Petroleum to the prospective Franchisee~~ (**the Future Pie Face Market Demand Representation**).

Particulars

- (a) *As UPF was the contractual counterparty for Franchisees, it can be inferred that the installation of the Pie Face Franchise into Franchisee sites in the United Network was with the knowledge and consent of UPF.*
- (b) *As UP was the contractual counterparty for Commission Agents, it can be inferred that the installation of the Pie Face Franchise into Commission Agent sites in the United Network was with the knowledge and consent of UP.*
- (c) *The Future Pie Face Market Demand Representation was implied in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would assume from the conduct of UPF and/or UP United Petroleum in undertaking installations of the Pie Face Franchise into sites in the United Network that there would be strong market demand for Pie Face products on and from ~~that the time that the Pie Face Franchise was being franchised by United Petroleum to the prospective Franchisee.~~*
- (d) *Further or in the alternative, the Future Pie Face Market Demand Representation was conveyed by silence when UPF and/or UP United Petroleum undertook installations of the Pie Face Franchise into sites in the United Network, however failed to disclose and remained silent as to the actual predicted market demand for Pie Face products at the time that the Pie Face Franchise installed throughout the United Network ~~was being proposed to be franchised by United Petroleum~~ in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent or Guarantor would expect that information to be disclosed.*

182 The Future Pie Face Market Demand Representation was made in trade or

commerce within the meaning of section 18 of the ACL.

- 183 The Future Pie Face Market Demand Representation was a continuing representation throughout the Franchisee Relevant Period and Commission Agent Relevant Period.
- 184 The Future Pie Face Market Demand Representation was a representation as to future matter.
- 185 There were no reasonable grounds to represent that there would be strong market demand for Pie Face products on and from the time that the Pie Face Franchise was being installed into sites in the United Network ~~franchised by UPF and/or UP United Petroleum to the prospective Franchisee~~.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

- 186 The Future Pie Face Market Demand Representation was misleading or deceptive or likely to mislead or deceive.
- 187 By making the Future Pie Face Market Demand Representation, UPF and/or UP United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.5 Pie Face Increased Profit Representation

- 188 By consenting to the installation of ~~installing~~ the Pie Face Franchise into sites in the United Network during the Franchisee Relevant Period and Commission Agent Relevant Period respectively,
- (a) UPF United Petroleum represented to Franchisees and Guarantors of those Franchisees; and
- (b) UP represented to Commission Agents, and Guarantors of those Commission Agents.

that the cost to a Franchisee or Commission Agent of retailing Pie Face products in the ordinary course of business could ~~would~~ be exceeded by the revenue to be derived from retailing Pie Face products in the ordinary course of business, and so result in increased profit for Franchisees or Commission Agents (**a Pie Face Increased Profit Representation**).

Particulars

- (a) *As UPF was the contractual counterparty for Franchisees, it can be inferred that the installation of the Pie Face Franchise into Franchisee sites in the United Network was with the knowledge and consent of UPF.*

- (b) As UP was the contractual counterparty for Commission Agents, it can be inferred that the installation of the Pie Face Franchise into Commission Agent sites in the United Network was with the knowledge and consent of UP.
- (d) *The Pie Face Increased Profit Representation was ~~partly express and partly implied~~, or alternatively was conveyed by silence.*
- (e) *Insofar as it was ~~express~~, on or about 3 March 2020, at an interview between Mr Istanikzai on behalf of FNH and State Manager Goran Gorgievski on behalf of United Petroleum, Mr Gorgievski told Mr Istanikzai that the installation of the Pie Face Franchise into the Cranbourne South Site would result in increased profit for FNH.*
- ~~(f) Further particulars of the express representations made to Franchisees and Commission Agents about the increased profit to be derived from installation of the Pie Face Franchise will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial, and if and when it is necessary for a determination to be made of the individual claims of Group Members.~~
- (g) *Insofar as it was implied, the Pie Face Increased Profit Representation was implied in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent would assume from the conduct of UPF and/or UP United Petroleum in undertaking installations of the Pie Face Franchise into sites in the United Network, or consenting to them, that the cost of retailing Pie Face products in the ordinary course of business would be exceeded by the revenue reasonably able to be derived from the retailing of Pie Face products in the ordinary course of business.*
- (h) *Further or in the alternative, the Pie Face Increased Profit Representation was conveyed by silence when UPF and/or UP United Petroleum undertook installations of the Pie Face Franchise into sites in the United Network, however failed to disclose and remained silent as to the likely costs of and likely revenue to be derived from retailing Pie Face products (of which it would be aware by reason of the acquisition of the Pie Face Franchise by a member of the United Group on or about the Acquisition Date 13 April 2017 from the ~~Receivers of Original Pie Face~~) in circumstances where a reasonable person in the position of a prospective or current Franchisee or Commission Agent would expect that information to be disclosed.*

189 The Pie Face Increased Profit Representation was made in trade or commerce within the meaning of section 18 of the ACL.

190 Insofar as the Pie Face Increased Profit Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

~~The Plaintiffs refer to the matters pleaded in paragraphs 19 to 48 above.~~

191 The Pie Face Increased Profit Representation was misleading or deceptive or likely to mislead or deceive.

192 ~~In all cases for all Franchisees,~~ the cost to a Franchisee and a Commission Agent of retailing Pie Face products in the ordinary course of business (which includes all overheads incurred in the ordinary course of business, including utility bills and staffing costs, as well as the costs of wastage) exceeded the revenue that could be derived from retailing Pie Face products, and so retailing Pie Face products would not result in increased profit for Franchisees or Commission Agents.

Particulars

Further particulars of the costs to Franchisees and Commission Agents of retailing Pie Face products compared to the revenue that could be derived from retailing Pie Face products will be given in evidence and following discovery.

~~193 In the alternative, in some cases for some Franchisees, the cost to a Franchisee of retailing Pie Face products in the ordinary course of business exceeded the revenue that could be derived from retailing Pie Face products, and so retailing Pie Face products would not result in increased profit for Franchisees.~~

Particulars

~~Further particulars of the costs to Franchisees of retailing Pie Face products compared to the revenue that could be derived from retailing Pie Face products will be given in evidence and following discovery.~~

194 By making the Pie Face Increased Profit Representation, UPF and/or UP United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.6 No Minimum Inventory Representation – Franchise Agreement

195 By reason of UPF's United Petroleum conduct in providing Franchisees and their Guarantors with the Franchise Agreement, Disclosure Document, and Operations

Manual, UPF United Petroleum represented to Franchisees and their Guarantors that there would not be any obligation on a Franchisee to maintain any minimum amount of inventory required to operate a site in the United Network (the **UPF No Minimum Inventory Representation**).

Particulars

- (a) *The UPF No Minimum Inventory Representation was implied in circumstances where a reasonable person in the position of a Franchisee and Guarantor would assume from being provided with and reviewing the Franchise Agreement ~~Disclosure Document, and Operations Manual~~ that it these documents would contain all the information relevant to the operation of a site in the United Network, including if a Franchisee was required to maintain any minimum amount of inventory, such as for Pie Face products.*
- (b) *Further or in the alternative, the UPF No Minimum Inventory Representation was conveyed by silence in circumstances where UPF United Petroleum failed to disclose and remained silent as to the requirement for Franchisees to maintain a minimum amount of inventory, such as for Pie Face products, in circumstances where a reasonable person in the position of a prospective ~~or current~~ Franchisee and Guarantor would expect that information to be disclosed.*

196 The UPF No Minimum Inventory Representation was made in trade or commerce within the meaning of section 18 of the ACL.

197 Insofar as the UPF No Minimum Inventory Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

198 The UPF No Minimum Inventory Representation was misleading or deceptive or likely to mislead or deceive.

199 ~~In all cases for all~~ Franchisees were required to maintain minimum amounts of inventory as directed by UPF United Petroleum including minimum amounts of retail stock allocated to them, and for Franchisees who operated a Pie Face Site, minimum levels of Pie Face stock, which minimum amounts included the Allocated Retail Stock and Allocated Pie Face Stock by reason of the Pie Face Site Directions.

200 By making the UPF No Minimum Inventory Representation, UPF United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.7 No Minimum Inventory Representation – Commission Agency Agreement

200A By reason of UP’s conduct in providing Commission Agents and their Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and Guarantors that there would not be any obligation on a Commission Agent to maintain any minimum amount of inventory required to operate a site in the United Network (the **UP No Minimum Inventory Representation**).

Particulars

- (a) The UP No Minimum Inventory Representation was implied in circumstances where a reasonable person in the position of a Commission Agent and Guarantor would assume from being provided with and reviewing the Commission Agency Agreement that it would contain all the information relevant to the operation of a site in the United Network, including if a Commission Agent was required to maintain any minimum amount of inventory, such as for Pie Face products.
- (b) Further or in the alternative, the UP No Minimum Inventory Representation was conveyed by silence in circumstances where UP failed to disclose and remained silent as to the requirement for Commission Agents to maintain a minimum amount of inventory, such as for Pie Face products, in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would expect that information to be disclosed.

200B The UP No Minimum Inventory Representation was made in trade or commerce within the meaning of section 18 of the ACL.

200C Insofar as the UP No Minimum Inventory Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

200E The UP No Minimum Inventory Representation was misleading or deceptive or likely to mislead or deceive.

200F Commission Agents were required to maintain minimum amounts of inventory as directed by UP including minimum amounts of retail stock allocated to them, including the Allocated Retail Stock, and for Commission Agents who operated a Pie Face Site, minimum levels of Pie Face stock, including the Allocated Pie Face Stock.

200G By making the UP No Minimum Inventory Representation, UP engaged in conduct in contravention of section 18 of the ACL.

Y.8 No Purchase Obligation Representation – Franchise Agreement

201 By reason of UPF's United Petroleum's conduct in providing Franchisees and their Guarantors with the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~, UPF United Petroleum represented to Franchisees and Guarantors that there would not be any obligation on a Franchisee to acquire goods or services as directed by UPF United Petroleum (the **UPF No Purchase Obligation Representation**).

Particulars

- (a) *The UPF No Purchase Obligation Representation was implied in circumstances where a reasonable person in the position of a prospective Franchisee and Guarantor would assume from being provided with and reviewing the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~ that it these documents would contain all the information relevant to the operation of a site in the United Network, including if a Franchisee was required to acquire goods or services as directed by UPF United Petroleum.*
- (b) *Further or in the alternative, the UPF No Purchase Obligation Representation was conveyed by silence in circumstances where UPF United Petroleum failed to disclose and remained silent as to the requirement for Franchisees to acquire goods or services as directed by UPF United Petroleum, in circumstances where a reasonable person in the position of a prospective ~~or current~~ Franchisee and Guarantor would expect that information to be disclosed.*

202 Insofar as the UPF No Purchase Obligation Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

203 The UPF No Purchase Obligation Representation was misleading or deceptive or likely to mislead or deceive.

204 ~~In all cases for all~~ Franchisees were obliged to acquire goods or services as directed by UPF United Petroleum, being the obligation to acquire the Allocated Retail Stock and the Allocated Pie Face Stock.

205 By making the No Purchase Obligation Representation, UPF United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.9 No Purchase Obligation Representation – Commission Agency Agreement

205A By reason of UP’s conduct in providing Commission Agents and their Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and Guarantors that there would not be any obligation on a Commission Agent to acquire goods or services as directed by UP (the **UP No Purchase Obligation Representation**).

Particulars

- (a) *The UP No Purchase Obligation Representation was implied in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would assume from being provided with and reviewing the Commission Agency Agreement that it would contain all the information relevant to the operation of a site in the United Network, including if a Commission Agent was required to acquire goods or services as directed by UP.*
- (b) *Further or in the alternative, the UP No Purchase Obligation Representation was conveyed by silence in circumstances where UP failed to disclose and remained silent as to the requirement for Commission Agents to acquire goods or services as directed by UP, in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would expect that information to be disclosed.*

205B Insofar as the UP No Purchase Obligation Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

205C The UP No Purchase Obligation Representation was misleading or deceptive or likely to mislead or deceive.

205D Commission Agents were obliged to acquire goods or services as directed by UP, being the obligation to acquire the Allocated Retail Stock and the Allocated Pie Face Stock.

205E By making the UP No Purchase Obligation Representation, UP engaged in conduct in contravention of section 18 of the ACL.

K.8 No Related Party Supplier Representation

206 — ~~By reason of United Petroleum's conduct in providing Franchisees with the Franchise Agreement, Disclosure Document, and Operations Manual, United Petroleum represented to Franchisees that there would not be any obligation on a Franchisee to acquire goods or services from a supplier controlled by an associate of United Petroleum within the meaning of clause 4 of Schedule 1 to the Oilcode 2006 and clause 4 of Schedule 1 to the Oilcode 2017, and/or section 11 of the Act, unless they were disclosed as such in these documents (**No Related Party Supplier Representation**).~~

Particulars

(a) — ~~The No Related Party Supplier Representation was implied in circumstances where a reasonable person in the position of a prospective Franchisee would assume from being provided with and reviewing the Franchise Agreement, Disclosure Document, and Operations Manual that these documents would contain all the information relevant to the operation of a site in the United Network, including if a Franchisee was to be required to acquire goods or services from an associate of United Petroleum.~~

(b) — ~~Further or in the alternative, the No Related Party Supplier Representation was conveyed by silence in circumstances where United failed to disclose and remained silent as to the requirement for Franchisees to acquire goods or services from an associate of United Petroleum, in circumstances where a reasonable person in the position of a prospective or current Franchisee would expect that information to be disclosed.~~

207 — ~~The No Related Party Supplier Representation was made in trade or commerce within the meaning of section 18 of the ACL.~~

208 — ~~Insofar as the No Related Party Supplier Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.~~

209 — ~~The No Related Party Supplier Representation was misleading or deceptive or likely to mislead or deceive.~~

210 — ~~Franchisees, who operated a Pie Face Site were required to acquire goods or services from an associate of United Petroleum, being Pie Face Bakery.~~

211 — ~~By making the No Related Party Supplier Representation, United Petroleum engaged in conduct in contravention of section 18 of the ACL.~~

Y.10 No Range Change Representation – Franchise Agreement

212 By reason of UPF's ~~United Petroleum's~~ conduct in providing Franchisees and their Guarantors with the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~, UPF ~~United Petroleum~~ represented to Franchisees and Guarantors that it would not require them to provide goods or services that did not form part of the range of goods or services described by ~~that these~~ documents (the UPF No Range Change Representation).

Particulars

- (a) *The UPF No Range Change Representation was implied in circumstances where a reasonable person in the position of a prospective Franchisee or Guarantor would assume from being provided with and reviewing the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~ that this ~~these~~ documents would contain all the information relevant to the operation of a site in the United Network, including if UPF ~~United Petroleum~~ would change the range of goods or services required to be supplied by the Franchisee.*
- (b) *Further or in the alternative, the UPF No Range Change Representation was conveyed by silence in circumstances where UPF ~~United Petroleum~~ failed to disclose and remained silent as to whether UPF ~~United Petroleum~~ would significantly change the range of goods or services required to be supplied by the Franchisee, in circumstances where a reasonable person in the position of a prospective Franchisee and Guarantor would expect that information to be disclosed in the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~.*

213 At all material times, UPF ~~United Petroleum~~ did intend to require Franchisees to provide goods or services that did not form part of the range of goods or services described by the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~.

Particulars

The goods or services that did not form part of the range of goods or services described by the Franchise Agreement, ~~Disclosure Document, and Operations Manual~~ includes the Pie Face stock ~~Stock~~.

214 Further or in the alternative, insofar as the UPF No Range Change Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

215 The UPF No Range Change Representation was misleading or deceptive or likely to mislead or deceive.

Particulars

The Plaintiffs refer to paragraph 213 above.

216 By making the UPF No Range Change Representation, UPF United Petroleum engaged in conduct in contravention of section 18 of the ACL.

Y.11 No Range Change Representation – Commission Agency Agreement

216A By reason of UP's conduct in providing Commission Agents and Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and their Guarantors that it would not require them to provide goods or services that did not form part of the range of goods or services described by that document (the **UP No Range Change Representation**).

Particulars

- (a) *The UP No Range Change Representation was implied in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would assume from being provided with and reviewing the Commission Agency Agreement, that this document would contain all the information relevant to the operation of a site in the United Network, including if UP would change the range of goods or services required to be supplied by the Commission Agent.*
- (b) *Further or in the alternative, the UP No Range Change Representation was conveyed by silence in circumstances where UP failed to disclose and remained silent as to whether UP would significantly change the range of goods or services required to be supplied by the Commission Agent, in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would expect that information to be disclosed in the Commission Agency Agreement.*

216B At all material times, UP did intend to require Commission Agents to provide goods or services that did not form part of the range of goods or services described by the Commission Agency Agreement.

Particulars

The goods or services that did not form part of the range of goods or services

described by the Commission Agency Agreement includes Pie Face stock.

216C Further or in the alternative, insofar as the UP No Range Change Representation was a representation about a future matter, it was made without reasonable grounds within the meaning of s 4 of the ACL.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

216D The UP No Range Change Representation was misleading or deceptive or likely to mislead or deceive.

216E By making the UP No Range Change Representation, UP engaged in conduct in contravention of section 18 of the ACL.

~~K.10 No Business Change Representation~~

~~217 By reason of United Petroleum conduct in providing Franchisees with the Franchise Agreement, Disclosure Document, and Operations Manual, United Petroleum represented to Franchisees that United Petroleum would not significantly change the nature of their business (**No Business Change Representation**).~~

Particulars

~~(a) The No Business Change Representation was implied in circumstances where a reasonable person in the position of a prospective Franchisee would assume from being provided with and reviewing the Franchise Agreement Disclosure Document, and Operations Manual that these documents would contain all the information relevant to the operation of a site in the United Network, including if United Petroleum would significantly change the nature of their business.~~

~~(b) Further or in the alternative, the No Business Change Representation was conveyed by silence in circumstances where United Petroleum failed to disclose and remained silent as to whether United Petroleum would significantly change the nature of their business, in circumstances where a reasonable person in the position of a prospective or current Franchisee would expect that information to be disclosed.~~

~~218 The No Business Change Representation was made in trade or commerce within the meaning of the ACL.~~

~~219 The No Business Change Representation was a representation about a future matter.~~

~~220 The No Business Change Representation was a continuing representation throughout the Relevant Period.~~

~~221 — There were no reasonable grounds within the meaning of section 4 of the ACL for United Petroleum making the No Business Change Representation.~~

Particulars

~~*The Plaintiffs rely on the presumption in section 4 of the ACL.*~~

~~222 — The No Business Change Representation was misleading or deceptive or likely to mislead or deceive.~~

~~223 — United Petroleum significantly changed the nature of their business for those Franchisees that operated Pie Face Sites by requiring them to acquire and sell Pie Face products by means of the Pie Face Franchise and the Allocated Pie Face Stock.~~

~~224 — By making the No Business Change Representation, United Petroleum engaged in conduct in contravention of section 18 of the ACL.~~

Y.12 Stock Control Representation – the Franchise Agreement

224A — By reason of UPF’s conduct in providing Franchisees and their Guarantors with the Franchise Agreement, UPF represented to Franchisees and Guarantors that they would have the ability to control their own stock levels for the purpose of their business, and would not be forced to pay for stock they did not order or need (the **UPF Stock Control Representation**).

Particulars

- (a) *The UPF Stock Control Representation was implied in circumstances where a reasonable person in the position of a prospective Franchisee and Guarantor would assume from being provided with and reviewing the Franchise Agreement that if a Franchisee did not have the ability to control their own stock levels in any respect and would be forced to pay for stock they did not order or need, it would be disclosed in the Franchise Agreement.*
- (b) *Further or in the alternative, the UPF Stock Control Representation was conveyed by silence in circumstances where UPF failed to disclose and remained silent as to Franchisees being unable to control their own stock levels, and that they would be forced to pay for stock they did not order or need, in circumstances where a reasonable person in the position of a prospective Franchisee and Guarantor would expect that information to be disclosed.*

224B — The UPF Stock Control Representation was made in trade or commerce within the meaning of the ACL.

224C — The UPF Stock Control Representation was a representation about a future matter.

224D The UPF Stock Control Representation was a continuing representation throughout the Franchisee Relevant Period.

224E There were no reasonable grounds within the meaning of section 4 of the ACL for UPF making the UPF Stock Control Representation.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

224F The UPF Stock Control Representation was misleading or deceptive or likely to mislead or deceive.

224G Franchisees were unable to control their own stock levels and had to pay for stock that they did not order or need, by reason of the Allocated Retail Stock, and for Franchisees that operated Pie Face Sites, by reason of the Allocated Pie Face Stock.

224H By making the UPF Stock Control Representation, UPF engaged in conduct in contravention of section 18 of the ACL.

Y.13 Stock Control Representation – the Commission Agency Agreement

224I By reason of UP's conduct in providing Commission Agents and their Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and Guarantors that they would have the ability to control their own stock levels for the purpose of their business, and would not be forced to pay for stock they did not order or need (the **UP Stock Control Representation**).

Particulars

- (c) *The UP Stock Control Representation was implied in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would assume from being provided with and reviewing the Commission Agency Agreement that if a Commission Agent did not have the ability to control their own stock levels in any respect, and would be forced to pay for stock they did not order or need, it would be disclosed in the Commission Agency Agreement.*
- (d) *Further or in the alternative, the UP Stock Control Representation was conveyed by silence in circumstances where UP failed to disclose and remained silent as to Commission Agents being unable to control their own stock levels, and that they would be forced to pay for stock they did not order or need, in circumstances where a reasonable person in the position of a prospective Commission Agent and Guarantor would expect that information to be disclosed.*

224J The UP Stock Control Representation was made in trade or commerce within the

meaning of the ACL.

224K The UP Stock Control Representation was a representation about a future matter.

224L The UP Stock Control Representation was a continuing representation throughout the Commission Agent Relevant Period.

224M There were no reasonable grounds within the meaning of section 4 of the ACL for UP making the UP Stock Control Representation.

Particulars

The Plaintiffs rely on the presumption in section 4 of the ACL.

224N The UP Stock Control Representation was misleading or deceptive or likely to mislead or deceive.

224O Commission Agents were unable to control their own stock levels, and had to pay for stock that they did not order or need, by reason of the Allocated Retail Stock, and for Commission Agents that operated Pie Face Sites, by reason of the Allocated Pie Face Stock.

224P By making the UP Stock Control Representation, UP engaged in conduct in contravention of section 18 of the ACL.

Z. Causation and Reliance

Z.1. FNH and Mr Istanikzai

225 In their decision to enter the FNH Franchise Agreement as a Franchisee and guarantor respectively, FNH and Mr Istanikzai relied on, alone and/or in combination:

- (a) the Original Pie Face Profitable Franchise Representation;
- (b) the Future Pie Face Profitable Franchise Representation;
- (c) the Original Pie Face Market Demand Representation;
- (d) the Future Pie Face Market Demand Representation;
- (e) the Pie Face Increased Profit Representation;
- (f) the UPF No Minimum Inventory Representation;
- (g) the UPF No Purchase Obligation Representation;
- (h) ~~the No Related Party Supplier Representation;~~
- (i) the UPF No Range Change Representation; and
- (j) ~~the No Business Change Representation,~~

(k) the UPF Stock Control Representation,

(together, the **UPF Post Acquisition Contravening Representations**).

226 FNH and Mr Istanikzai would not have entered into the FNH Franchise Agreement as Franchisee and guarantor respectively had ~~UPF United Petroleum~~ not made the UPF Post Acquisition Contravening Representations.

226A Further or alternatively, FNH and Mr Istanikzai would not have suffered the loss pleaded in this Amended Statement of Claim had UPF not made the UPF Post Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraphs 305 and 306 below.

226B In the premises, FNH and Mr Istanikzai are entitled to orders pursuant to section 237 of the ACL that:

- (a) the FNH Franchise Agreement is declared void;
- (b) the guarantee given by Mr Istanikzai is declared void; and/or
- (c) compensation.

Z.2 The JJ Trustees

227 In their decision to enter the JJ Franchise Agreement in their capacities as trustees and guarantors respectively, the JJ Trustees relied on, alone and/or in combination:

- (a) the UPF No Minimum Inventory Representation;
- (b) the UPF No Purchase Obligation Representation;
- (c) the UPF No Range Change Representation; and
- ~~(d) the No Business Change Representation~~
- (e) the UPF Stock Control Representation,

(together, the **UPF Pre-Acquisition Contravening Representations**),

~~pleaded at paragraph 225 above.~~

228 The JJ Trustees would not have entered into the JJ Franchise Agreement in their capacities as ~~Franchisees~~ trustees and guarantors had ~~UPF United Petroleum~~ not made the UPF Pre-Acquisition Contravening Representations.

228A Further or alternatively, the JJ Trustees would not have suffered the loss pleaded in this Amended Statement of Claim had UPF not made the UPF Pre-Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraphs 308 and 308A below.

228B In the premises, the JJ Trustees are entitled to orders pursuant to section 237 of the ACL that:

- (a) the JJ Franchise Agreement is declared void;
- (b) the guarantee given by the JJ Trustees are declared void; and/or
- (c) compensation.

Z.3 Yug Sharma

228C In its decision to enter the Yug Sharma Agreement as a Commission Agent, Yug Sharma relied on, alone and/or in combination:

- (a) the Original Pie Face Profitable Franchise Representation;
- (b) the Future Pie Face Profitable Franchise Representation;
- (c) the Original Pie Face Market Demand Representation;
- (d) the Future Pie Face Market Demand Representation;
- (e) the Pie Face Increased Profit Representation;
- (f) the UP No Minimum Inventory Representation;
- (g) the UP No Purchase Obligation Representation; and
- (h) the UP Stock Control Representation.

(together, the **UP Post Acquisition Contravening Representations**).

228D Yug Sharma would not have entered into the Yug Sharma Agreement as a Commission Agent had UP not made the UP Post Acquisition Contravening Representations.

228E Further or alternatively, Yug Sharma would not have suffered the loss pleaded in this Amended Statement of Claim had UP not made the UP Post Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraph 309B below.

228F In the premises, Yug Sharma is entitled to orders pursuant to section 237 of the ACL that:

(a) the Yug Sharma Agreement is declared void; and/or

(b) compensation.

Z.4. Causation and Reliance— Post Acquisition Franchisees and Guarantors with Pie Face Sites

229 In respect of Franchisees and their associated Guarantors who entered into a Franchise Agreement for a site that is a Pie Face Site after the Acquisition Date (**Post Acquisition Franchisees and Guarantors**), their decision to enter into the Franchise Agreements, ~~Franchisees with Pie Face Sites and their associated Guarantors relied~~ was made in reliance on, alone and/or in combination, one or more of the UPF Post Acquisition Contravening Representations.

230 ~~Franchisees with Pie Face Sites and their associated Guarantors~~ Post Acquisition Franchisees and Guarantors would not have entered into their Franchise Agreements as Franchisees and Guarantors respectively had UPF United Petroleum not made the UPF Post Acquisition Contravening Representations.

230A Further or alternatively, Post Acquisition Franchisees and Guarantors would not have suffered the loss pleaded in this Amended Statement of Claim had UPF not made the UPF Post Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraphs 309 below.

230B In the premises, Post Acquisition Franchisees and Guarantors are entitled to orders pursuant to section 237 of the ACL that:

(a) their Franchise Agreements are declared void;

(b) the guarantees given by their Guarantors are declared void; and/or

(c) compensation.

Z.5. Post Acquisition Commission Agents and Guarantors

230C In respect of Commission Agents and their associated Guarantors who entered into a Commission Agency Agreement for a site that is a Pie Face Site after the Acquisition Date (**Post Acquisition Commission Agents and Guarantors**), their decision to enter into the Commission Agency Agreements was made in reliance on, alone and/or in combination, one or more of the UP Post Acquisition Contravening Representations.

230D Post Acquisition Commission Agents and Guarantors would not have entered into their Commission Agency Agreements as Commission Agents and Guarantors respectively had UP not made the UP Post Acquisition Contravening Representations.

230E Further or alternatively, Post Acquisition Commission Agents and Guarantors would not have suffered the loss pleaded in this Amended Statement of Claim had UP not made the UP Post Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraphs 309B and 309C below.

230F In the premises, Post Acquisition Commission Agents and Guarantors are entitled to orders pursuant to section 237 of the ACL that:

- (a) their Commission Agency Agreements are declared void;
- (b) the guarantees given by their Guarantors are declared void; and/or
- (c) compensation.

Z.6 Pre-Acquisition Franchisees and Guarantors

230G In respect of Franchisees and their associated Guarantors who entered into a Franchise Agreement before the Acquisition Date (**Pre-Acquisition Franchisees and Guarantors**), their decision to enter into the Franchise Agreements was made in reliance on, alone and/or in combination, one or more of the UPF Pre-Acquisition Contravening Representations, being:

- (a) the UPF No Minimum Inventory Representation;
- (b) the UPF No Purchase Obligation Representation;
- (c) the UPF No Range Change Representation; and
- (d) the UPF Stock Control Representation.

230H Pre-Acquisition Franchisees and Guarantors would not have entered into their Franchise Agreements as Franchisees and Guarantors respectively had UPF not made the UPF Pre-Acquisition Contravening Representations.

230I Further or alternatively, Pre-Acquisition Franchisees and Guarantors would not have suffered the loss pleaded in this Amended Statement of Claim had UPF not made the UPF Pre-Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraphs 309 and 309A below.

230J In the premises, Pre-Acquisition Franchisees and Guarantors are entitled to orders pursuant to section 237 of the ACL that:

- (a) their Franchise Agreements are declared void;

(b) the guarantees given by their Guarantors are declared void; and/or

(c) compensation.

230K In respect of Commission Agents and their associated Guarantors who entered into a Commission Agency Agreement before the Acquisition Date (**Pre-Acquisition Commission Agents and Guarantors**), their decision to enter into the Commission Agency Agreements was made in reliance on, alone and/or in combination, one or more of:

(a) the UP No Minimum Inventory Representation;

(b) the UP No Purchase Obligation Representation;

(c) the UP No Range Change Representation; and

(d) the UP Stock Control Representation.

(together, the **UP Pre-Acquisition Contravening Representations**).

230L Pre-Acquisition Commission Agents and Guarantors would not have entered into their Commission Agency Agreements as Commission Agents and Guarantors respectively had UP not made the UP Pre-Acquisition Contravening Representations.

230M Further or alternatively, Pre-Acquisition Commission Agents and Guarantors would not have suffered the loss pleaded in this Amended Statement of Claim had UP not made the UP Pre-Acquisition Contravening Representations.

Particulars

The Plaintiffs refer to paragraphs 309B and 309C below.

230N In the premises, Pre-Acquisition Commission Agents and Guarantors are entitled to orders pursuant to section 237 of the ACL that:

(a) their Commission Agency Agreements are declared void;

(b) the guarantees given by their Guarantors are declared void; and/or

(c) compensation.

AA. Breach of Contract

AA.1 The Franchise Agreement

231 It was a term of the Franchise Agreement that the Franchisee was required to pay the Initial Franchise Fee as consideration for the rights granted by UPF ~~United Petroleum~~ under the Franchise Agreement.

Particulars

Clause 2.1 of the Franchise Agreement.

Terms otherwise not defined in this Statement of Claim are defined in the Franchise Agreement.

232 The Initial Franchise Fee is set out in Item 10 of the Schedule to the Franchise Agreement.

Particulars

The Initial Franchise Fee for FNH was \$145,000 (plus GST).

The Initial Franchise Fee for the JJ Trustees was \$159,500 (inclusive of GST).

233 It was a term of the Franchise Agreement that UPF United Petroleum grants to the Franchisee the right to use the System and the United Image solely in conjunction with the Franchised Business at the Licenced Area.

Particulars

Clause 2.1 of the Franchise Agreement.

Terms otherwise not defined in this Statement of Claim are defined in the Franchise Agreement.

234 The System is defined in the Franchise Agreement to mean the comprehensive retail sales system developed or owned or licenced by UPF United Petroleum for the management of retail outlets to enable franchisees to benefit from group identification in market competition utilising the specific signs, standards, products, trade names, marks and logos of the United Image.

Particulars

Clause 1.1 of the Franchise Agreement.

235 The United Image is defined in the Franchise Agreement to mean the specific image created and/or acquired and/or licenced by UPF United Petroleum for the group identification of United Outlets.

Particulars

Clause 1.1 of the Franchise Agreement.

236 The United Outlets are defined in the Franchise Agreement to mean the service stations and convenience sites that specialise in the sale of Motor Fuels, Other Proprietary Products and/or Shop Products that are operated and identified under the Names and Marks and are owned and operated by UPF United Petroleum or an associate of UPF

~~United Petroleum~~; or owned and operated by a franchisee under a franchise.

Particulars

Clause 1.1 of the Franchise Agreement.

- 237 Shop Products is defined in the Franchise Agreement to mean any products or services the range and type of which are specified as “Shop Products” in the Franchise Operations Manual but excludes Other Proprietary Products and Motor Fuels.

Particulars

Clause 1.1 of the Franchise Agreement.

Terms otherwise not defined in this Statement of Claim are defined in the Franchise Agreement.

- 238 Motor Fuels do not include Pie Face branded products.

Particulars

Terms otherwise not defined in this Statement of Claim are defined in the Franchise Agreement.

- 239 Other Proprietary Products do not include Pie Face branded products.

Particulars

Terms otherwise not defined in this Statement of Claim are defined in the Franchise Agreement.

- 240 At no time during the Franchisee Relevant Period did the Franchise Operations Manual specify Pie Face branded products as Shop Products.

- 241 Shop Products do not include Pie Face branded products.

- 242 The United Image does not include images associated with Pie Face.

Particulars

Particulars of the images associated with Pie Face that comprise the Pie Face Intellectual Property will be given in evidence and following discovery.

- 243 The System, defined in the Franchise Agreement, does not include the sale of Pie Face branded products.

- 244 The Franchised Business is defined in the Franchise Agreement to mean the business of operating the Franchise from the Licenced Area.

Particulars

Clause 1.1 of the Franchise Agreement.

245 The Franchise is defined in the Franchise Agreement to mean the right to operate a business using the Intellectual Property and the rights granted under the Franchise Agreement.

Particulars

Clause 1.1 of the Franchise Agreement.

246 The Intellectual Property is defined to include but is not limited to all present and future intellectual and industrial property rights conferred by statute, at common law or in equity wherever existing, and includes the “Names and Marks” owned by or licensed to the Franchisor.

Particulars

Clause 1.1 of the Franchise Agreement.

247 The Intellectual Property does not include the Pie Face Intellectual Property.

Particulars

The Plaintiffs refer to the definition of “Names and Marks” in the Franchise Agreement at clause 1.1, Item 17 of the Schedule to the Franchise Agreement, and Annexure 3 to the Franchise Agreement.

248 By reason of the matters pleaded in paragraphs 231 to 247 above, the Franchised Business does not include the business of selling Pie Face products.

249 In the premises, UPF United Petroleum had no contractual power to require Franchisees to sell Pie Face products under the Franchise Agreement.

250 In the premises, UPF United Petroleum had no contractual power to require Franchisees to acquire the Allocated Pie Face Stock under the Franchise Agreement.

251 In the premises, by UPF United Petroleum:

(a) requiring Franchisees to sell Pie Face products as part of the Pie Face Franchise; ~~and~~

(b) requiring Franchisees to acquire the Allocated Pie Face Stock,

United Petroleum breached the Franchise Agreement (each a **Franchise Agreement Breach** and together with each other Franchise Agreement Breach, the **Franchise Agreement Breaches**).

AA.2 UPF's ~~United Petroleum's~~ obligation to seek agreement for Additional Activities

252 It was a term of the Franchise Agreement that the Franchisee must not, other than in accordance with clause 12.14 of the Franchise Agreement, provide any services from the Licenced Area other than those services specifically contemplated under the terms of the Franchising Agreement.

Particulars

Clause 12.14(a) of the Franchise Agreement.

253 It was a term of the Franchise Agreement that UPF ~~United Petroleum~~ may, from time to time, specify additional activities in the Franchise Operations Manual which the Franchisee may wish to offer at or from the Licenced Area (**Additional Activity**).

Particulars

Clause 12.14(b) of the Franchise Agreement.

254 It was a term of the Franchise Agreement that if UPF ~~United Petroleum~~ specifies an Additional Activity which the Franchisee would like to offer from the Licenced Area, the Franchisee and UPF ~~United Petroleum~~ must agree in writing:

- (a) the Additional Activity to be provided from the Licenced Area;
- (b) any fees that the Franchisee must pay to UPF ~~United Petroleum~~ in relation to the grant of the right to provide the Additional Activity; and
- (c) any other conditions that apply to the provision of the Additional Activity (for instance, required training and hours of operation);

prior to the Franchisee providing the Additional Activity (being the **Additional Activity Obligations**).

Particulars

Clause 12.14(c) of the Franchise Agreement.

255 At no time did the Franchisees agree in writing to sell Pie Face products as part of the Pie Face Franchise, which was required pursuant to the Additional Activities Obligations.

256 In the premises, by UPF ~~United Petroleum~~ requiring Franchisees to purchase and sell Pie Face products, including the Allocated Pie Face Stock, UPF ~~United Petroleum~~ failed to comply with and breached the Additional Activity Obligations (also a

Franchise Agreement Breach and together with each other **Franchise Agreement Breach**, the **Franchise Agreement Breaches**).

AA.3 The Commission Agency Agreement

256A It was a term of the Commission Agency Agreement that the Commission Agent must receive and properly and safely store at the Premises all Motor Spirit and Other United Products consigned to the Commission Agent by UP and must sell that Motor Spirit and Other United Products in accordance with the Commission Agency Agreement.

Particulars

Clause 3.1(a) of the Commission Agency Agreement

256B Motor Spirit is defined in the Commission Agency Agreement to mean any fuel to be used in propelling road, sea or air vehicles including super grade petrol, unleaded petrol, distillate or liquid super grade petrol, unleaded petrol, distillate or liquid petroleum gas consigned to the Commission Agent from time to time for sale on UP's behalf.

Particulars

Clause 1.1 of the Commission Agency Agreement

256C Other United Products is defined in the Commission Agency Agreement to mean those products or services which bear the Get Up or Trade Marks consigned to the Agent from time to time for sale on UP's behalf or other products or services purchased from preferred suppliers or from UP.

Particulars

Clause 1.1 of the Commission Agency Agreement

256D Get Up is defined in the Commission Agency Agreement to mean the trade marks, logos, devices, designs, colour schemes, layouts or trading style which UP may now or at any time employ in connection with: (a) goods manufactured, supplied or sold by UP; (f) services provided by UP; (g) the Premises; or (h) uniforms or clothing adopted by UP.

Particulars

Clause 1.1 of the Commission Agency Agreement

256E Trade Marks is defined in the Commission Agency Agreement to mean those trade marks or service marks, whether registered or unregistered belonging to or used by UP which are described in Schedule 7 of the Commission Agency Agreement or which UP permits the Commission Agent to use from time to time or any trademarks notified

to the Commission Agent by UP from time to time.

Particulars

Clause 1.1 of the Commission Agency Agreement

256F Premises is defined in the Commission Agency Agreement to mean that land, building, plant, fixtures, fittings and other improvements described in Schedule 6 of the Commission Agency Agreement together with any other plant, equipment and improvements which may be supplied by UP during the term of the Commission Agency Agreement.

Particulars

Clause 1.1 of the Commission Agency Agreement

256G It was a term of the Commission Agency Agreement that during the term of the Commission Agency Agreement the Commission Agent may purchase from UP on the terms set out in Clause 14 of the Commission Agency Agreement and any additional terms set out in Schedule 8 of the Commission Agency Agreement or on such terms as UP notifies to the Commission Agent such quantities of UP's products other than Motor Spirit and Other United Products as the Commission Agent from time to time requires.

Particulars

Clause 14.1 of the Commission Agency Agreement

256H It was a term of the Commission Agency Agreement that any of UP's products supplied to the Commission Agent by UP under Clause 14 of the Commission Agency Agreement are supplied for the purposes of that part of the Business which is conducted by the Commission Agent on the Commission Agent's own account as principal.

Particulars

Clause 14.2 of the Commission Agency Agreement

256I Business is defined in the Commission Agency Agreement to mean means the business carried on by the Commission Agent from the Premises of selling Motor Spirit and Other United Products on behalf of UP and providing automotive services.

Particulars

Clause 1.1 of the Commission Agency Agreement

256J It was a term of the Commission Agency Agreement that UP must not require the Commission Agent to purchase from UP products other than Motor Spirit and Other United Products if the Commission Agent chooses not to purchase UP's products other than Motor Spirit and Other United Products pursuant to cl 14.1 of the Commission Agency Agreement.

Particulars

This term is implied from cl 14.1 and cl 14.2 of the Commission Agency Agreement

256K Pie Face branded products do not include any fuel to be used in propelling road, sea or air vehicles including super grade petrol, unleaded petrol, distillate or liquid super grade petrol, unleaded petrol, distillate or liquid petroleum gas.

Particulars

Current technology does not accommodate using Pie Face branded products to propel road, sea or air vehicles

256L Motor Spirit does not include Pie Face branded products.

256M UP is not a manufacturer of Pie Face branded products for the purposes of the Commission Agency Agreement.

256N UP is not a supplier of Pie Face branded products for the purposes of the Commission Agency Agreement.

256O UP is not a seller of Pie Face branded products for the purposes of the Commission Agency Agreement.

256P Pie Face branded products do not bear trade marks, logos, devices, designs, colour schemes, layouts or trading style which UP had at any time employed in connection with goods manufactured, supplied or sold by UP for the purposes of the Commission Agency Agreement.

256Q Pie Face branded products do not bear trade marks, logos, devices, designs, colour schemes, layouts or trading style which UP had at any time employed in connection with services provided by UP for the purposes of the Commission Agency Agreement.

256R Pie Face branded products do not bear trade marks, logos, devices, designs, colour schemes, layouts or trading style which UP had at any time employed in connection with the Premises for the purposes of the Commission Agency Agreement.

256S Pie Face branded products do not bear trade marks, logos, devices, designs, colour schemes, layouts or trading style which UP had at any time employed in connection

with uniforms or clothing adopted by UP for the purposes of the Commission Agency Agreement.

- 256T Pie Face branded products do not bear the Get Up for the purposes of the Commission Agency Agreement.
- 256U The Pie Face Intellectual Property does not belong to UP for the purposes of the Commission Agency Agreement.
- 256V The Pie Face Intellectual Property is not used by UP for the purposes of the Commission Agency Agreement.
- 256W The Pie Face Intellectual Property are not described in Schedule 7 of the Commission Agency Agreement.
- 256X The Pie Face Intellectual Property is not licenced by UP to the Commission Agent.
- 256Y UP did not notify the Commission Agent that the Pie Face Intellectual Property was to be a trademark for the purposes of the definition of Trade Marks in the Commission Agency Agreement.
- 256Z Pie Face branded products do not bear the Trade Marks for the purposes of the Commission Agency Agreement.
- 256AA No supplier of Pie Face branded products have been designated as preferred suppliers for the purposes of the Commission Agency Agreement.
- 256AB UP is not a vendor of Pie Face branded products for the purposes of the Commission Agency Agreement.
- 256AC Other United Products does not include Pie Face branded products for the purposes of the Commission Agency Agreement.
- 256AD In the premises, UP was not permitted to require Commission Agents to sell Pie Face products under the Commission Agency Agreement.

Particulars

The plaintiffs refer to and repeat paragraph 256J

- 256AE In the premises, UP had no contractual power to require Commission Agents to acquire the Allocated Pie Face Stock under the Commission Agency Agreement.

Particulars

The plaintiffs refer to and repeat paragraph 256J

256AF In the premises, by UP:

(a) requiring Commission Agents to sell Pie Face products as part of the Pie Face Franchise; and

(b) requiring Commission Agents to acquire the Allocated Pie Face Stock,

UP breached the Commission Agency Agreement (a **Commission Agency Agreement Breach**).

AA.4 Implied terms – Duties of Co-operation and Good Faith

257 It was an implied term of the Franchise Agreement and the Commission Agency Agreement that UPF and UP United Petroleum owed the Franchisee and Commission Agent respectively a duty of cooperation to achieve the objects of the Franchise Agreement and the Commission Agency Agreement (**Duty of Cooperation**).

Particulars

The term is implied by law.

258 UPF's and UP's United Petroleum's Duty of Cooperation included a duty to do all things necessary to enable the Franchisee and Commission Agent respectively to have the benefit of the Franchise Agreement or Commission Agency Agreement.

Particulars

The term is implied by law.

259 UPF's and UP's United Petroleum's Duty of Cooperation included a duty to not act unreasonably, arbitrarily or capriciously, in disregard of the Franchisee's or Commission Agent's interests; and, or alternatively, so as to prevent or deny the Franchisee or Commission Agent from enjoying the full benefit of the Franchise Agreement or Commission Agency Agreement.

Particulars

The term is implied by law.

260 It was an implied term of the Franchise Agreement and Commission Agency Agreement that UPF and UP United Petroleum's owed the Franchisee and Commission Agent respectively a duty to act reasonably and in good faith towards the Franchisee and Commission Agent (**Duty of Good Faith**).

Particulars

The term is implied by law.

261 UPF's and UP's United Petroleum's Duty of Good Faith included a duty to promote the

mutual business interests of the Franchisee and Commission Agent respectively on the one part and UPF and UP United Petroleum on the other part.

Particulars

The term is implied by law.

262 The objects of, or alternatively the full benefit of, the Franchise Agreement and Commission Agency Agreement, relevant to the content of the duties in paragraphs 257 and 260 above include the opportunity for the Franchisee and Commission Agent to earn profits and/or income by operating the site operated by the Franchisee or Commission Agent Franchised Business.

Particulars

Recital A of the Franchise Agreement.

Recital E of the Franchise Agreement.

263 UPF and UP United Petroleum's requiring Franchisees and Commission Agents respectively to purchase the Allocated Retail Stock and Allocated Pie Face Stock was not expressly or impliedly authorised by the Franchise Agreement or the Commission Agency Agreement.

264 In the premises, UPF and UP United Petroleum requiring its Franchisees and Commission Agents to acquire and sell the Allocated Retail Stock and Allocated Pie Face Stock constituted a breach of UPF's and UP's United Petroleum's Duty of Cooperation (with respect to Franchisees, a **Franchise Agreement Breach** and together with each other Franchise Agreement Breach, the **Franchise Agreement Breaches**, and with respect to Commission Agents, a **Commission Agency Agreement Breach**, and together with each other Commission Agency Agreement Breach, the **Commission Agency Agreement Breaches**).

265 In the premises, UPF and UP United Petroleum's requiring its Franchisees and Commission Agents to acquire and sell the Allocated Retail Stock and Allocated Pie Face Stock constituted a breach of UPF's and UP's United Petroleum's Duty of Good Faith (also a **Franchise Agreement Breach** and/or a **Commission Agency Agreement Breach**).

BB. Unconscionable Conduct

BB.1 Allocated Retail Stock

266 During the Franchisee Relevant Period and the Commission Agent Relevant Period, UPF and UP United Petroleum required the Plaintiffs, and Franchisees and Commission Agent Group Members respectively to purchase the Allocated Retail

Stock.

Particulars

The requirement arises out of the directions issued by UPF and UP with respect to the purchasing and display of Allocated Retail Stock, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

Particulars of the Allocated Retail Stock allocated to the Plaintiffs will be given in evidence.

~~The Plaintiffs repeat paragraph 90 above.~~

266A The requirement to purchase, and the allocation of the Allocated Retail Stock, in circumstances where it caused the Plaintiffs and Franchisee and Commission Agent Group Members loss or damage, was unconscionable conduct by UPF and UP within the meaning of s 21 of the ACL.

Particulars

- (a) The Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock allocated to them.
- (b) Each of the Plaintiffs, and Franchisee and Commission Agent Group Members were in a weaker bargaining position to that of UPF and UP given the differences in size and that the Plaintiffs and Franchisee and Commission Agent Group Members were vulnerable to termination of their agreements by UPF and UP.
- (c) The allocation of the Allocated Retail Stock was not reasonably necessary for the protection of the legitimate interests of UPF and UP.
- (d) The allocation of the Allocated Retail Stock in circumstances where UPF and UP determined what stock was to be purchased and displayed by the Plaintiffs and Franchisee and Commission Agent Group Members, non-compliance with which could result in a termination notice, amounted to undue pressure and unfair tactics towards the Plaintiffs, Franchisee and Commission Agent Group Members.
- (e) The Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement.
- (f) The requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated Retail Stock was not disclosed in the

Franchise Agreement, Disclosure Document, or Commission Agency Agreement.

- (g) The Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.
- (h) The risk to the Plaintiffs and Franchisee and Commission Agent Group Members from the Allocated Retail Stock is that it could result in the Retail Stock Wastage.

266B Avi Silver had actual knowledge of, or alternatively wilful blindness towards, the essential facts that rendered the requirement to purchase, and the allocation of Allocated Retail Stock unconscionable.

Particulars

- (a) By reason of directing the allocation of Allocated Retail Stock to Franchisee and Commission Agents (including the Plaintiffs), Avi Silver was aware of the risk that it would result in the Retail Stock Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 97A above;
- (b) By reason of directing the allocation of Allocated Retail Stock, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock allocated to them;
- (c) By reason of his directorship of UP and UPF, and the general practice of Avi Silver approving termination notices before they were issued, Avi Silver knew that UPF and UP were in a bargaining position of strength compared to the Plaintiffs and Franchisee and Commission Agent Group Members;
- (d) By reason of his directorship of UP and UPF, Avi Silver knew that the Allocated Retail Stock was not reasonably necessary for the protection of the legitimate interests of UP and UPF.
- (e) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement;
- (f) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated

Retail Stock was not disclosed in the Franchise Agreement, Disclosure Document, or Commission Agency Agreement;

- (g) By reason of his directorship of UP and UPF and his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.

266C In the premises, Avi Silver was involved in the unconscionable conduct of UPF and UP with respect to the Allocated Retail Stock within the meaning of section 2 of the ACL.

Particulars

Avi Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the sites of the Plaintiffs.

Avi Silver directed the United Petroleum Executive to allocate the Allocated Retail Stock throughout the United Network, which included the sites of the Plaintiffs, and for Franchisees and Commission Agents to pay for the Allocated Retail Stock as pleaded at paragraph 90A above.

BB.2 Allocated Pie Face Stock

267 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP United Petroleum required Franchisees and Commission Agents respectively, including the Plaintiffs, to purchase the Allocated Pie Face Stock.

Particulars

The requirement arises out of the directions issued by UPF and UP with respect to the purchase and display of Allocated Pie Face Stock, particulars of which will be given in evidence, failing compliance with which the Franchisees and Commission Agents risked a breach notice and/or termination notice.

The Plaintiffs repeat paragraph 77 above.

267A The requirement to pay for, and the allocation of the Allocated Pie Face Stock, in circumstances where it caused Franchisees and Commission Agents loss or damage, was unconscionable conduct by UPF and UP within the meaning of s 21 of the ACL.

267B Avi Silver had actual knowledge of, or alternatively wilful blindness towards, the essential facts that rendered the allocation of Allocated Pie Face Stock unconscionable.

Particulars

- (a) Avi Silver had knowledge of the Pie Face Overheads by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 74A above;
- (b) By reason of directing the allocation of Allocated Pie Face Stock to Franchisee and Commission Agents (including the Plaintiffs), Avi Silver was aware of the risk that it would result in the Pie Face Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 84A above;
- (c) By reason of directing the allocation of Allocated Pie Face Stock, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Pie Face Stock allocated to them;
- (d) By reason of his directorship of UP and UPF, and the general practice of Avi Silver approving termination notices before they were issued, Avi Silver knew that UPF and UP were in a bargaining position of strength compared to the Plaintiffs and Franchisee and Commission Agent Group Members;
- (e) By reason of his directorship of UP and UPF, Avi Silver knew that the Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UP and UPF.
- (f) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement;
- (g) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated Pie Face Stock was not disclosed in the Franchise Agreement, Disclosure Document, or Commission Agency Agreement;
- (h) By reason of his directorship of UP and UPF and his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.

267C In the premises, Avi Silver was involved in the unconscionable conduct of UPF and UP within the meaning of section 2 of the ACL.

Particulars

Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F above:

Mr Silver approved lists of Allocated Pie Face Stock, and directed the United Petroleum Executive to allocate the Allocated Pie Face Stock as pleaded at paragraphs 77C and 77D above.

BB.3 Rebate Revenue Stream

268 UPF and UP United Petroleum and other members of the United Group obtained rebates from suppliers for ordering the Allocated Retail Stock and the Allocated Pie Face Stock, including from the Retail Suppliers and the Pie Face Suppliers.

Particulars

A 'rebate' was a sum of money paid back to UPF or UP, or alternatively a member of the United Group, by a supplier in return for UPF or UP placing an order for a particular quantity of stock with that supplier.

The rebates were usually in the form of a lump sum or a percentage of the order.

Rebates were obtained by UPF and UP, or alternatively a member of the United Group, on a wide range of products including retail stock such as cigarettes, drinks, and confectionary, as well as Pie Face stock purchased from third party suppliers who supplied UPF and UP with Pie Face pies, pastries, sandwiches, sausage rolls, doughnuts and other food items.

Particulars of the suppliers, stock ordered, and the amounts of the rebates obtained by UPF and UP United Petroleum and the United Group will be given in ~~evidence and following discovery.~~

269 ~~The prices of the Allocated Retail Stock and Allocated Pie Face Stock were set by agreement between United Petroleum on the one part and the Retail Suppliers and the Pie Face Suppliers on the other.~~

269A It was general business practice for Avi Silver to direct the United Petroleum Executive at Leadership Team Meetings to negotiate rebates with suppliers of stock,

with Avi Silver approving the amount of the rebate negotiated before the stock was ordered.

Particulars

The directions were oral and were provided by Avi Silver to the United Petroleum Executive at Leadership Team Meetings.

Members of the United Petroleum Executive of which the Plaintiffs are currently aware were Gary Brinkworth, Chief Executive Officer, David Szymczak, Chief Operating Officer, George Svinos, Group Chief Financial Officer, and Bruce Feodorof, Pie Face Chief Executive Officer.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

Particulars of the suppliers, stock ordered, and the amounts of the rebates on that stock derived by UPF and UP are not currently in the Plaintiffs' knowledge, and particulars of the same will be provided following discovery.

- 270 The rebates approved by Avi Silver on the prices of Allocated Retail Stock and Allocated Pie Face Stock were set at a level so as to maximise the rebates that could be obtained by UPF and UP United Petroleum and the United Group without having regard to the legitimate interests of the Franchisees or Commission Agents (the Rebate Revenue Stream).

Particulars

Particulars of the suppliers, stock ordered, and the amounts of the rebates on that stock derived by UPF and UP are not currently in the Plaintiffs' knowledge, and particulars of the same will be provided following discovery.

- 270A The greater the amount of Allocated Retail Stock and Allocated Pie Face Stock allocated to Franchisees and Commission Agents by UPF and UP respectively, the greater the quantum of the Rebate Revenue Stream derived by companies in the United group of companies, including UPF and UP.

- 270B In the premises of paragraph 270A above, the Rebate Revenue Stream was unconscionable conduct of UPF and UP within the meaning of section 21 of the ACL.

Particulars

- (a) The Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them.
- (b) The effect of UPF and UP requiring the Plaintiffs and Franchisee and Commission Agent Group Members to sell Allocated Retail Stock and Allocated Pie Face Stock was to shift the cost of the overheads and business risk associated with the sale of Allocated Retail Stock and Allocated Pie Face Stock from UPF and UP to Franchisees and Commission Agents.
- (c) Each of the Plaintiffs, and Franchisee and Commission Agent Group Members were in a weaker bargaining position to that of UPF and UP given the differences in size and that the Plaintiffs and Franchisee and Commission Agent Group Members were vulnerable to termination of their agreements by UPF and UP.
- (d) The allocation of the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UPF and UP.
- (e) The allocation of the Allocated Retail Stock and Allocated Pie Face Stock in circumstances where UPF and UP determined what stock was to be purchased and displayed by the Plaintiffs and Franchisee and Commission Agent Group Members, non-compliance with which could result in a termination notice, amounted to undue pressure and unfair tactics towards the Plaintiffs, Franchisee and Commission Agent Group Members.
- (f) The Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement.
- (g) The requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Franchise Agreement, Disclosure Document, or Commission Agency Agreement.
- (h) The Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.
- (i) The risk to the Plaintiffs and Franchisee and Commission Agent Group Members from the Allocated Retail Stock and Allocated Pie Face Stock is that it could

result in the Retail Stock Wastage and Pie Face Wastage.

270C

Avi Silver had actual knowledge of, or wilful blindness towards, the essential facts that made the Rebate Revenue Stream unconscionable within the meaning of section 21 of the ACL.

Particulars

- (a) Avi Silver had knowledge of the Pie Face Overheads by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 74A above;
- (b) By reason of directing the allocation of Allocated Pie Face Stock to Franchisee and Commission Agents (including the Plaintiffs) Avi Silver was aware of the risk that it would result in the Pie Face Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 84A above;
- (c) By reason of directing the allocation of Allocated Retail Stock to Franchisee and Commission Agents (including the Plaintiffs), Avi Silver was aware of the risk that it would result in the Retail Stock Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 97A above;
- (d) By reason of directing the allocation of Allocated Retail Stock and Allocated Pie Face Stock, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them;
- (e) By reason of his directorship of UP and UPF, and the general practice of Avi Silver approving termination notices before they were issued, Avi Silver knew that UPF and UP were in a bargaining position of strength compared to the Plaintiffs and Franchisee and Commission Agent Group Members;
- (f) By reason of his directorship of UP and UPF, Avi Silver knew that the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UP and UPF.
- (g) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement;
- (h) By reason of his execution of the Franchise Agreements and Commission

Agency Agreements, Avi Silver knew that the requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Franchise Agreement, Disclosure Document, or Commission Agency Agreement;

- (i) By reason of his directorship of UP and UPF and his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.

270D By reason of Avi Silver:

- (a) directing the negotiation of rebates with suppliers and approving the rebate that was negotiated (as pleaded at paragraph 269A above);
- (b) directing the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network (as pleaded at paragraph 90A above);
- (c) approving the lists of Allocated Pie Face Stock (as pleaded in paragraph 77C above); and
- (d) directing the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network (as pleaded at paragraph 77D above).

Avi Silver was involved in the unconscionable conduct of UPF and UP with respect to the Rebate Revenue Stream within the meaning of section 2 of the ACL in that Avi Silver (a) aided, abetted, counselled or procured the contraventions, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contraventions.

BB.4 Margin Revenue Stream

270E The Allocated Retail Stock and Allocated Pie Face Stock was purchased directly from wholesalers by UPF and UP, with UPF and UP adding a margin on the wholesale price of the stock ordered without having regard to the legitimate interests of Franchisees and Commission Agents (the Margin Revenue Stream).

Particulars

A 'margin' was an additional mark-up on stock purchased by UPF and/or UP, the benefit of which was then retained by UPF and/or UP.

Particulars of the wholesale price and retail price of the Allocated Retail Stock and Allocated Pie Face Stock, and the income derived by UPF and UP from the margins on Allocated Retail Stock and Allocated Pie Face Stock and not

currently within the Plaintiffs' knowledge, and particulars of the same will be given following discovery.

270F It was general business practice for Avi Silver to direct the United Petroleum Executive at Leadership Team Meetings to negotiate margins with suppliers of stock, with Avi Silver approving the amount of the margin negotiated before the stock was ordered.

Particulars

The approvals were oral and were given at Leadership Team Meetings on an ad hoc basis.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

Particulars of the margins added to stock purchased by UPF and UP are not currently in the Plaintiffs' knowledge, and particulars of the same will be provided following discovery.

270G The greater the amount of Allocated Retail Stock and Allocated Pie Face Stock allocated to Franchisees and Commission Agents by UPF and UP respectively, the greater the Margin Revenue Stream derived by UPF and UP and the United Group.

270H The greater the amount of Allocated Retail Stock and Allocated Pie Face Stock allocated to Franchisees and Commission Agents by UPF and UP respectively, the greater the quantum of the Margin Revenue Stream derived by companies in the United group of companies, including UPF and UP.

270I In the premises of paragraph 270H above, the Margin Revenue Stream was unconscionable conduct of UPF and UP within the meaning of section 21 of the ACL.

Particulars

(a) The Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them.

(b) The effect of UPF and UP requiring the Plaintiffs and Franchisee and Commission Agent Group Members to sell Allocated Retail Stock and Allocated Pie Face Stock was to shift the cost of the overheads and business risk

associated with the sale of Allocated Retail Stock and Allocated Pie Face Stock from UPF and UP to Franchisees and Commission Agents.

- (c) Each of the Plaintiffs, and Franchisee and Commission Agent Group Members were in a weaker bargaining position to that of UPF and UP given the differences in size and that the Plaintiffs and Franchisee and Commission Agent Group Members were vulnerable to termination of their agreements by UPF and UP.
- (d) The allocation of the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UPF and UP.
- (e) The allocation of the Allocated Retail Stock and Allocated Pie Face Stock in circumstances where UPF and UP determined what stock was to be purchased and displayed by the Plaintiffs and Franchisee and Commission Agent Group Members, non-compliance with which could result in a termination notice, amounted to undue pressure and unfair tactics towards the Plaintiffs, Franchisee and Commission Agent Group Members.
- (f) The Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement.
- (g) The requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Franchise Agreement, Disclosure Document, or Commission Agency Agreement.
- (h) The Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.
- (i) The risk to the Plaintiffs and Franchisee and Commission Agent Group Members from the Allocated Retail Stock and Allocated Pie Face Stock is that it could result in the Retail Stock Wastage and Pie Face Wastage.

270J Avi Silver had actual knowledge of, or wilful blindness towards, the essential facts that made the Margin Revenue Stream unconscionable within the meaning of section 21 of the ACL.

Particulars

- (a) Avi Silver had knowledge of the Pie Face Overheads by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 74A above:

- (b) By reason of directing the allocation of Allocated Pie Face Stock to Franchisee and Commission Agents (including the Plaintiffs) Avi Silver was aware of the risk that it would result in the Pie Face Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 84A above;
- (c) By reason of directing the allocation of Allocated Retail Stock to Franchisee and Commission Agents Group Members (including the Plaintiffs), Avi Silver was aware of the risk that it would result in the Retail Stock Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 97A above;
- (d) By reason of directing the allocation of Allocated Retail Stock and Allocated Pie Face Stock, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them;
- (e) By reason of his directorship of UP and UPF, and the general practice of Avi Silver approving termination notices before they were issued, Avi Silver knew that UPF and UP were in a bargaining position of strength compared to the Plaintiffs and Franchisee and Commission Agent Group Members;
- (f) By reason of his directorship of UP and UPF, Avi Silver knew that the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UP and UPF.
- (g) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that Plaintiffs and Franchisee and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement or Commission Agency Agreement;
- (h) By reason of his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the requirement for the Plaintiffs and Franchisee and Commission Agent Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Franchise Agreement, Disclosure Document, or Commission Agency Agreement;
- (i) By reason of his directorship of UP and UPF and his execution of the Franchise Agreements and Commission Agency Agreements, Avi Silver knew that the Plaintiffs and Franchisee and Commission Agent Group Members were not permitted to negotiate the terms of the Franchise Agreement or Commission Agency Agreement.

270K By reason of Avi Silver:

- (a) directing the negotiation of margins with suppliers and approving the amount of the margins on stock that was purchased by UPF and/or UP;
- (b) directing the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network (as pleaded at paragraph 90A above);
- (c) approving the lists of Allocated Pie Face Stock (as pleaded in paragraph 77C above); and
- (d) directing the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network (as pleaded at paragraph 77D above).

Avi Silver was involved in the unconscionable conduct of UPF and UP with respect to the Margin Revenue Stream within the meaning of section 2 of the ACL in that Avi Silver (a) aided, abetted, counselled or procured the contraventions, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contraventions.

BB.5 Franchise Fee Revenue Stream

270L By reason of clause 17.8 of the Franchise Agreement (as pleaded at paragraphs 58A and 58B above), the greater the amount of Allocated Retail Stock and Allocated Pie Face Stock sold by Franchisees, the greater the Franchise Service Fee that was charged by UPF (the Franchise Fee Revenue Stream).

Particulars

The amount of the Franchise Service Fee charged to FNH by UPF at various times throughout the duration of the FNH Franchise Agreement will be given in evidence.

The amount of the Franchise Service Fee charged to the JJ Trustees by UPF at various times throughout the duration of the JJ Franchise Agreement will be given in evidence.

Particulars of the Franchise Service Fees paid by Franchisees throughout the duration of their Franchise Agreements will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

Particulars of the income derived by UPF from the Franchise Fee Revenue Stream will be given following discovery.

270M The Franchise Service Fee charged to Franchisees pursuant to clause 17.8 of the

Franchise Agreement was not reduced to take account of the Retail Stock Wastage or the Pie Face Wastage.

270N The greater the amount of Allocated Retail Stock and Allocated Pie Face Stock allocated to Franchisees by UPF, the greater the Franchise Fee Revenue Stream.

270O In the premises of paragraph 270N above, the Franchise Fee Revenue Stream was unconscionable conduct of UPF within the meaning of section 21 of the ACL.

Particulars

- (a) *FNH, the JJ Trustees and Franchisee Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them.*
- (b) *The effect of UPF requiring the Plaintiffs and Franchisee Group Members to sell Allocated Retail Stock and Allocated Pie Face Stock was to shift the cost of the overheads and business risk associated with the sale of Allocated Retail Stock and Allocated Pie Face Stock from UPF to the Plaintiffs and Franchisee Group Members.*
- (c) *FNH, the JJ Trustees and Franchisee Group Members were in a weaker bargaining position to that of UPF given the differences in size and that FNH, the JJ Trustees and Franchisee Group Members were vulnerable to termination of their agreements by UPF.*
- (d) *The allocation of the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UPF.*
- (e) *The allocation of the Allocated Retail Stock and Allocated Pie Face Stock in circumstances where UPF determined what stock was to be purchased and displayed by FNH, the JJ Trustees and Franchisee Group Members, non-compliance with which could result in a termination notice, amounted to undue pressure and unfair tactics towards FNH, the JJ Trustees and Franchisee Group Members.*
- (f) *FNH, the JJ Trustees and Franchisee Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Franchise Agreement.*
- (g) *The requirement for FNH, the JJ Trustees and Franchisee Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Franchise Agreement or Disclosure Document.*
- (h) *FNH, the JJ Trustees and Franchisee Group Members were not permitted to*

negotiate the terms of the Franchise Agreement.

- (i) The risk to FNH, the JJ Trustees and Franchisee Group Members from the Allocated Retail Stock and Allocated Pie Face Stock is that it could result in the Retail Stock Wastage and Pie Face Wastage.

270P Avi Silver had actual knowledge of, or wilful blindness towards, the essential facts that made the Franchise Fee Revenue Stream unconscionable within the meaning of section 21 of the ACL.

Particulars

- (a) Avi Silver had knowledge of the Pie Face Overheads by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 74A above;
- (b) By reason of directing the allocation of Allocated Pie Face Stock to Franchisee Group Members (including FNH and the JJ Trustees) Avi Silver was aware of the risk that it would result in the Pie Face Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 84A above;
- (c) By reason of directing the allocation of Allocated Retail Stock to Franchisee Group Members (including FNH and the JJ Trustees), Avi Silver was aware of the risk that it would result in the Retail Stock Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 97A above;
- (d) By reason of directing the allocation of Allocated Retail Stock and Allocated Pie Face Stock, Avi Silver knew that FNH and the JJ Trustees and Franchisee Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them;
- (e) By reason of his directorship of UPF, and the general practice of Avi Silver approving termination notices before they were issued, Avi Silver knew that UPF was in a bargaining position of strength compared to FNH and the JJ Trustees and Franchisee Group Members;
- (f) By reason of his directorship of UPF, Avi Silver knew that the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UPF.
- (g) By reason of his execution of the Franchise Agreements, Avi Silver knew that FNH, JJ Trustees and Franchisee Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers

under the Franchise Agreement:

- (h) By reason of his execution of the Franchise Agreements, Avi Silver knew that the requirement for FNH, the JJ Trustees and Franchisee Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Franchise Agreement or Disclosure Document;
- (i) By reason of his directorship of UPF and his execution of the Franchise Agreements, Avi Silver knew that FNH, the JJ Trustees and Franchisee Group Members were not permitted to negotiate the terms of the Franchise Agreement.

270Q By reason of Avi Silver:

- (a) directing the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network (as pleaded at paragraph 90A above);
- (b) approving the lists of Allocated Pie Face Stock (as pleaded in paragraph 77C above);
- (c) directing the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network (as pleaded in paragraph 77D above).

Avi Silver was involved in the unconscionable conduct of UPF with respect to the Franchise Fee Revenue Stream within the meaning of section 2 of the ACL in that Avi Silver (a) aided, abetted, counselled or procured the contraventions, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contraventions.

BB.6 Licence Fee Revenue Stream

270R By reason of the licence fees charged to Commission Agents by UP, the greater the amount of Allocated Retail Stock and Allocated Pie Face Stock sold by Commission Agents, the greater the licence fees that were charged by UP (**the Licence Fee Revenue Stream**).

Particulars

Particulars of the income derived by UP from the Licence Fee Revenue Stream will be given following discovery.

Particulars of the licence fees paid by Commission Agents throughout the duration of their Commission Agent Agreements will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

270S The licence fees charged to Commission Agents by UP were not reduced to take

account of the Retail Stock Wastage or the Pie Face Wastage.

270T The greater the amount of Allocated Retail Stock and Allocated Pie Face Stock allocated to Commission Agents by UP, the greater the Licence Fee Revenue Stream.

270U In the premises of paragraph 270T above, the Licence Fee Revenue Stream was unconscionable conduct of UP within the meaning of section 21 of the ACL.

Particulars

- (a) Yug Sharma and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them.
- (b) The effect of UP requiring the Plaintiffs and Commission Agent Group Members to sell Allocated Retail Stock and Allocated Pie Face Stock was to shift the cost of the overheads and business risk associated with the sale of Allocated Retail Stock and Allocated Pie Face Stock from UP to the Plaintiffs and Commission Agent Group Members.
- (c) Yug Sharma and Commission Agent Group Members were in a weaker bargaining position to that of UP given the differences in size and that Yug Sharma and Commission Agent Group Members were vulnerable to termination of their agreements by UP.
- (d) The allocation of the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UP.
- (e) The allocation of the Allocated Retail Stock and Allocated Pie Face Stock in circumstances where UP determined what stock was to be purchased and displayed by Yug Sharma and Commission Agent Group Members, non-compliance with which could result in a termination notice, amounted to undue pressure and unfair tactics towards Yug Sharma and Commission Agent Group Members.
- (f) Yug Sharma and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were Approved Suppliers under the Commission Agency Agreement.
- (g) The requirement for Yug Sharma and Commission Agent Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Commission Agent Agreement.
- (h) Yug Sharma and Commission Agent Group Members were not permitted to

negotiate the terms of the Commission Agent Agreement.

- (i) The risk to Yug Sharma and Commission Agent Group Members from the Allocated Retail Stock and Allocated Pie Face Stock is that it could result in the Retail Stock Wastage and Pie Face Wastage.

270V Avi Silver had actual knowledge of, or wilful blindness towards, the essential facts that made the Licence Fee Revenue Stream unconscionable within the meaning of section 21 of the ACL.

Particulars

- (a) Avi Silver had knowledge of the Pie Face Overheads by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 74A above;
- (b) By reason of directing the allocation of Allocated Pie Face Stock to Commission Agent Group Members (including Yug Sharma) Avi Silver was aware of the risk that it would result in the Pie Face Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 84A above;
- (c) By reason of directing the allocation of Allocated Retail Stock to Commission Agent Group Members (including Yug Sharma), Avi Silver was aware of the risk that it would result in the Retail Stock Wastage, of which Avi Silver had knowledge by reason of it being discussed at Leadership Team Meetings as pleaded at paragraph 97A above;
- (d) By reason of directing the allocation of Allocated Retail Stock and Allocated Pie Face Stock, Avi Silver knew that Yug Sharma and Commission Agent Group Members could not choose the type or quantity of the Allocated Retail Stock and Allocated Pie Face Stock allocated to them;
- (e) By reason of his directorship of UP, and the general practice of Avi Silver approving termination notices before they were issued, Avi Silver knew that UP was in a bargaining position of strength compared to Yug Sharma and Commission Agent Group Members;
- (f) By reason of his directorship of UP, Avi Silver knew that the Allocated Retail Stock and Allocated Pie Face Stock was not reasonably necessary for the protection of the legitimate interests of UP.
- (g) By reason of his execution of the Commission Agent Agreements, Avi Silver knew that Yug Sharma and Commission Agent Group Members were prevented from acquiring identical or equivalent stock unless they were

Approved Suppliers under the Commission Agent Agreement:

- (h) By reason of his execution of the Commission Agent Agreements, Avi Silver knew that the requirement for Yug Sharma and Commission Agent Group Members to acquire the Allocated Retail Stock and Allocated Pie Face Stock was not disclosed in the Commission Agent Agreement;
- (i) By reason of his directorship of UP and his execution of the Commission Agent Agreements, Avi Silver knew that Yug Sharma and Commission Agent Group Members were not permitted to negotiate the terms of the Commission Agent Agreement.

270W By reason of Avi Silver:

- (a) directing the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network (as pleaded at paragraph 90A above);
- (b) approving the lists of Allocated Pie Face Stock (as pleaded in paragraph 77C above); and
- (c) directing the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network (as pleaded in paragraph 77D above).

Avi Silver was involved in the unconscionable conduct of UP with respect to the Licence Fee Revenue Stream within the meaning of section 2 of the ACL in that Avi Silver (a) aided, abetted, counselled or procured the contraventions, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contraventions.

~~271 — During the Relevant Period, the volume of Allocated Retail Stock and Allocated Pie Face Stock that United Petroleum required Franchisees to purchase regularly exceeded what could be reasonably sold by Franchisees, as evidenced by the Retail Stock Wastage and the Pie Face Wastage.~~

~~272 — The purpose of United Petroleum allocating the Allocated Retail Stock and Allocated Pie Face Stock to Franchisees despite the ongoing Retail Stock Wastage and Pie Face Wastage was to maximise the amount of profit that could be gained by United Petroleum and the United Group through rebates from the suppliers of that stock, including Retail Suppliers and Pie Face Suppliers (in addition to the profit obtained through production of Pie Face stock by Pie Face Bakery that also became part of the Allocated Pie Face Stock).~~

~~273 — The effect of United Petroleum requiring Franchisees to acquire the Allocated Retail Stock and Allocated Pie Face Stock was to cause Franchisees to incur costs for products they did not order or need.~~

~~274 — The effect of United Petroleum requiring Franchisees to acquire the Allocated Retail Stock and Allocated Pie Face Stock was to reduce the cash flow available to Franchisees.~~

~~275 — The effect of United Petroleum requiring Franchisees to acquire the Allocated Retail Stock and Allocated Pie Face Stock was to reduce the revenue earned by Franchisees.~~

~~276 — The effect of United Petroleum requiring Franchisees to acquire the Allocated Retail Stock and Allocated Pie Face Stock was to reduce the profit able to be earned by Franchisees.~~

~~277 — In the premises of paragraphs 266 to 276 above, the Allocated Retail Stock and Allocated Pie Face Stock was detrimental to Franchisees but benefitted UPF United Petroleum and the United Group.~~

~~278 — The effect of United Petroleum requiring Franchisees to sell Allocated Retail Stock and Allocated Pie Face Stock was to shift the cost of the overheads and business risk associated with the sale of Allocated Retail Stock and Allocated Pie Face Stock from United Petroleum to Franchisees.~~

~~279 — By reason of the matters pleaded in paragraphs **Error! Reference source not found.** to 88 above, United Petroleum was aware of the matters pleaded in paragraphs 273 to 276 above throughout the Relevant Period yet continued to require Franchisees to acquire the Allocated Retail Stock and Allocated Pie Face Stock.~~

~~280 — In the premises, the effect of United Petroleum requiring Franchisees to acquire the Allocated Retail Stock and Allocated Pie Face Stock was to provide United Petroleum and the United Group with a revenue stream benefitting United Petroleum at the expense of Franchisees.~~

~~281 — By reason of the matters pleaded in paragraphs 266 to 280 above, United Petroleum conducted the business of the United Network in a manner that prioritised increasing the profit to be obtained by United Petroleum and the United Group, including from the Pie Face Franchise, to the disregard of the legitimate interests of Franchisees.~~

~~L. Contravention of section 21 of the ACL~~

~~282 — By reason of the matters pleaded in each of paragraphs 270 to 281 above (separately or in any combination), United Petroleum engaged in conduct that was, in all the circumstances, unconscionable:~~

~~(a) in trade or commerce;~~

~~(b) in connection with the supply or possible supply of services to Franchisees~~

~~within the meaning of section 21 of the ACL; and
(e) in contravention of section 21 of the ACL;~~

~~(that conduct being the **Pie Face Unconscionable Conduct**).~~

Particulars

- ~~(a) — United Petroleum was in a bargaining position of strength compared to the Plaintiffs and Group Members within the meaning of s 22(1)(a) of the ACL;~~
- ~~(b) — The Plaintiffs and Group Members were required to sell Allocated Retail Stock and Allocated Pie Face Stock, comply with the Pie Face Site Directions, employ Pie Face Team Members, incur the costs of the Pie Face Overheads or risk termination of their business, all of which were not reasonably necessary for the protection of the legitimate interests of United Petroleum within the meaning of s 22(1)(b) of the ACL;~~
- ~~(c) — The Plaintiffs and Group Members were required to purchase the Allocated Retail Stock and Allocated Pie Face Stock from suppliers approved by United Petroleum, which was not reasonably necessary for the protection of the legitimate interests of United Petroleum within the meaning of s 22(1)(b) of the ACL;~~
- ~~(d) — By reason of the Pie Face Site Directions and the Pie Face Audits, which could lead to a termination of the Franchise Agreement, pressure and unfair tactics were used on the Plaintiffs and Group Members by United Petroleum in relation to the supply or possible supply of goods or services under the Franchise Agreement within the meaning of s 22(1)(d) of the ACL;~~
- ~~(e) — By reason of the Franchising Code Breaches, United Petroleum failed to comply with the requirements of an applicable industry code within the meaning of s 22(1)(g) of the ACL;~~
- ~~(f) — By reason of the Short Form Oilcode Disclosure Omissions and the Long Form Oilcode Disclosure Omissions, United Petroleum failed to comply with the requirements of an applicable industry code within the meaning of s 22(1)(g) of the ACL;~~
- ~~(g) — United Petroleum unreasonably failed to disclose to the Plaintiffs and Group Members prior to entry into Franchise Agreements United~~

~~Petroleum's requirement for the Plaintiffs and Group Members to sell the Allocated Retail Stock and Allocated Pie Face Stock, comply with the Pie Face Site Directions, incur the Pie Face Overheads and employ Pie Face Team Members, within the meaning of s 22(1)(i)(i) of the ACL;~~

~~(h) — United Petroleum unreasonably failed to disclose to the Plaintiffs and Group Members the risk that the Allocated Retail Stock and Allocated Pie Face Stock, the Pie Face Overheads, the employment of Pie Face Team Members and compliance with the Pie Face Site Directions could result in the Plaintiffs and Group Members suffering financial loss, being a risk that United Petroleum should have foreseen would not be apparent to the Plaintiffs and Group Members within the meaning of s 22(1)(i)(ii) of the ACL;~~

~~(i) — United Petroleum unreasonably failed to disclose to the Plaintiffs and Group Members the risk that a failure to comply with the Pie Face Site Directions could result in the Franchise Agreement being terminated, being a risk that United Petroleum should have foreseen would not be apparent within the meaning of s 22(1)(i)(ii) of the ACL;~~

~~(j) — By failing to comply with the Additional Activities Obligation and committing the Franchise Agreement Breaches, United Petroleum failed to comply with the Franchise Agreements between it and Franchisees within the meaning of s 22(1)(j)(iii) of the ACL;~~

~~(k) — The Franchise Agreement did not permit United Petroleum to require that the Plaintiffs and Group Members: acquire the Allocated Retail Stock; or acquire the Allocated Pie Face Stock; employ Pie Face Team Members; and comply with Pie Face Site Directions, however United Petroleum required the Plaintiffs and Group Members to do so after they entered their respective Franchise Agreements within the meaning of s 22(1)(j)(iv) of the ACL; and~~

~~(l) — By reason of the matters pleaded above, United Petroleum failed to act in good faith within the meaning of s 22(1)(l) of the ACL.~~

CC. Unfair Contract Terms

CC.1 The Franchise Agreement

282A Each Franchise Agreement was an agreement to which Part 2-3 of the ACL applies.

Particulars

The Plaintiffs repeat paragraphs 53A, 54, 56, 59A, 60, 61, and 66 above.

282B Clause 17.6(a) of the Franchise Agreement, whereby a Franchisee agreed that the Software Support Fee, Equipment Support Fee, and Insurance Fee would be reviewed on 1 July in each year and adjusted as necessary to allow for any increases in expenses incurred by UPF in providing such support and insurance to a Franchisee:

- (a) *causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;*
- (b) *is not reasonably necessary in order to protect the legitimate interests of UPF; and*
- (c) *would cause financial detriment to a Franchisee if it were to be applied or relied upon by UPF.*

and by reason of the above amounts to an *unfair* contract term within the meaning of section 24 of the ACL.

Particulars

- (a) *As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it permits UPF a wide discretion to adjust the Software Support Fee, Equipment Support Fee, and Insurance Fee without any corresponding right of a Franchisee to ascertain the legitimacy of the increases, or a review of the increases.*
- (b) *As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.*
- (c) *As to (c) above, increases in the fees in reliance on this clause would cause financial detriment to a Franchisee.*

282C Clause 17.7 of the Franchise Agreement, whereby a Franchisee acknowledged and accepted that UPF will be entitled to receive and retain direct from the suppliers and other parties any rebates, allowances and other payments the suppliers and parties may choose to make, whether or not the rebates, allowances or payments are made as a consequence of purchases made by a Franchisee, and the Franchisee agreed that these amounts were required by UPF to fund UPF's obligations under the Franchise Agreement and the System (as that

term is defined in the Franchise Agreement) and to reflect the value of the United Image (as that term is defined in the Franchise Agreement), and would not be disclosed to the Franchisee:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause financial detriment to a Franchisee if it were to be applied or relied upon by UPF.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as:
 - (i) it does not allow any corresponding right to a Franchisee to ascertain whether the rebates, allowances, or other payments are properly required by UPF to fund UPF's obligations under the Franchise Agreement and the System (as that term is defined in the Franchise Agreement) or actually properly reflect the value of the United Image (as that term is defined in the Franchise Agreement);
 - (ii) it permits UPF to receive a financial benefit at the expense and risk of Franchisees as a result of the Allocated Retail Stock or Allocated Pie Face Stock in circumstances where Franchisees did not order that stock, and were not reimbursed for the wastage that occurred when that stock was unsold;
 - (iii) normally in a retail context, a person in the position of a Franchisee would receive the rebate or other payment from a supplier if they were also the person bearing the financial risk if any stock was to be unsold; and
 - (iv) the rebates, allowances, and other payments made by suppliers and other parties are not disclosed to a Franchisee.
- (b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.

(c) As to (c) above, reliance on this clause for UPF to retain rebates or other payments that would otherwise be paid to Franchisees from stock ordered by or allocated to Franchisees would cause financial detriment to a Franchisee.

282D Clause 17.8 of the Franchise Agreement, which permitted (subject to clause 17.8(c)) UPF to increase the Franchise Service Fee (as that term is defined in the Franchise Agreement) to an amount which is equal to or less than 14% of the average monthly Gross Revenue (as that term is defined in the Franchise Agreement) (plus GST) of a Franchisee:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause financial detriment to a Franchisee if it were to be applied or relied upon by UPF.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

(a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it:

- (i) permits UPF a wide discretion to increase the Franchise Service Fee without any assessment of the individual circumstances of a Franchisee and whether such an increase was financially sustainable for a Franchisee; and
- (ii) does not allow any corresponding right of a Franchisee to have the increase reviewed;

(b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.

(c) As to (c) above, increases in the Franchise Service Fee in reliance on this clause would cause financial detriment to a Franchisee.

282E Clause 24.1(b) of the Franchise Agreement, which required a Franchisee to purchase or otherwise acquire Other Proprietary Products and Shop Products only from Preferred Suppliers (as those terms are defined in the Franchise

Agreement):

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause financial detriment to a Franchisee if it were to be applied or relied upon by UPF.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it:
 - (i) restricts a Franchisee's ability to seek to obtain goods from alternative suppliers at what may be a more competitive price;
and
 - (ii) allows UPF to obtain a financial benefit at the expense and risk of Franchisees by UPF directing Franchisees to acquire products from those suppliers that have the most favourable terms with UPF, and that would result in the highest payments to UPF in the form of rebates or other payments;
- (b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.
- (c) As to (c) above, requiring Franchisees to acquire Other Proprietary Products and Shop Products only from Preferred Suppliers (whose products may be more expensive than those of other suppliers that a Franchisee could source in the market) in reliance on this clause would cause financial detriment to a Franchisee.

282F

Clause 24.2(a) and (b) of the Franchise Agreement, pursuant to which a Franchisee must:

- (a) use and sell only Motor Fuels, Other Proprietary Products and Shop Products in the Franchised Business (as those terms are defined in the Franchise Agreement) which have been approved by UPF, are permitted by the Franchise Agreement and comply with the requirements of the

Franchise Operations Manual; and

- (b) under no circumstances, use or sell products other than Motor Fuels, Other Proprietary Products and Shop Products (as those terms are defined in the Franchise Agreement) or those approved by UPF or are otherwise permitted by the Franchise Agreement;
- (c) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (d) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (e) would cause financial detriment to a Franchisee if it were to be applied or relied upon by UPF.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (c) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it:
 - (i) restricts a Franchisee's ability to seek to obtain alternative goods from those approved by UPF at what may be a more competitive price; and
 - (ii) allows UPF to obtain a financial benefit at the expense and risk of Franchisees by UPF approving only products from those suppliers that have the most favourable terms with UPF, and that would result in the highest payments to UPF in the form of rebates or other payments;
- (b) As to (d) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.
- (c) As to (e) above, requiring Franchisees to use and sell only Other Proprietary Products and Shop Products in the Franchised Business (as those terms are defined in the Franchise Agreement) which have been approved by UPF, are permitted by the Franchise Agreement and comply with the requirements of the Franchise Operations Manual (which products may be more expensive than those that a Franchisee could source in the market) in reliance on this clause would cause financial detriment to a Franchisee.

282G Clause 24.3(b) of the Franchise Agreement, pursuant to which a Franchisee must acquire all Other Proprietary Products and Shop Products (as those terms are defined in the Franchise Agreement) and supplies only from suppliers who have been approved in writing by UPF:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause financial detriment to a Franchisee if it were to be applied or relied upon by UPF,

and by reason of the above amounts to an *unfair* contract term within the meaning of section 24 of the ACL.

Particulars

- (a) *As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it:*
 - (i) *restricts a Franchisee's ability to seek to obtain alternative goods from suppliers other than those approved by UPF at what may be a more competitive price; and*
 - (ii) *allows UPF to obtain a financial benefit at the expense and risk of Franchisees by UPF approving only suppliers that have the most favourable terms with UPF, and that would result in the highest payments to UPF in the form of rebates or other payments;*
- (b) *As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.*
- (c) *As to (c) above, requiring Franchisees to acquire Other Proprietary Products and Shop Products (as those terms are defined in the Franchise Agreement) and supplies only from suppliers which have been approved in writing by UPF (whose products may be more expensive than those that a Franchisee could source in the market) in reliance on this clause would cause financial detriment to a Franchisee.*

282H Clause 24.7 of the Franchise Agreement, pursuant to which a Franchisee acknowledges and agrees that the provisions of clause 24 are fair, reasonable and necessary to maintain a uniform product range, and otherwise to maintain the

integrity in the marketplace of the System (as that term is defined in the Franchise Agreement):

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause detriment to a Franchisee if it were to be applied or relied upon by UPF.

and by reason of the above amounts to an *unfair* contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as:
 - (i) it would deem conduct that may otherwise be unfair to be fair and would limit a Franchisee's right to sue on a provision of clause 24;
 - (ii) it prevents a Franchisee from challenging a provision of clause 24; and
 - (iii) the provisions of clause 24 are not necessary to maintain a uniform product range and the integrity in the marketplace of the System (as that term is defined in the Franchise Agreement), as the Franchisee could obtain products from alternative and more affordable suppliers while still maintaining a uniform product range and upholding the integrity in the marketplace of the System, however is restricted from doing so by the provisions of clause 24 including clause 24.7;
- (b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL; and
- (c) As to (c) above, reliance on this clause would cause financial detriment to a Franchisee given that the other provisions of clause 24 cause financial detriment to a Franchisee, and a Franchisee is prevented by clause 24.7 from challenging their liability for the same.

2821

Clause 32.1(h), pursuant to which UPF had a right to terminate a Franchise Agreement if the Franchisee breached the Franchise Agreement, otherwise than

by behaviour described in clauses 32.1(a) – (g), more than 3 times:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause detriment to a Franchisee if it were to be applied or relied upon by UPF,

and by reason of the above amounts to an *unfair* contract term within the meaning of section 24 of the ACL.

Particulars

- (a) *As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it permits UPF a wide discretion to ultimately terminate the Franchise Agreement based on what may be trivial breaches of the Franchise Agreement, despite any breach being capable of being or has been or is being remedied, and without any corresponding right of a Franchisee to terminate the Franchise Agreement.*
- (b) *As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.*
- (c) *As to (c) above, termination of a Franchise Agreement in reliance on this clause would result in detriment to a Franchisee.*

282J

Clause 32.4(k) of the Franchise Agreement, which provides that a Franchisee commits an 'Event of Default' if UPF serves upon the Franchisee, pursuant to clause 32.3, three or more written notices for a breach of an obligation imposed on the Franchisee under the Franchise Agreement despite any breach being capable of being or has been or is being remedied:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (c) would cause detriment to a Franchisee if it were to be applied or relied upon by UPF,

and by reason of the above amounts to an *unfair* contract term within the meaning

of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement as it permits UPF a wide discretion to ultimately terminate the Franchise Agreement based on what may be trivial breaches of the Franchise Agreement, despite any breach being capable of being or has been or is being remedied, and without any corresponding right of a Franchisee to terminate the Franchise Agreement.
- (b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.
- (c) As to (c) above, termination of a Franchise Agreement in reliance on this clause would result in detriment to a Franchisee.

282K

Clause 35.2 of the Franchise Agreement, which picks up the definition of "Confidential Information" in the Franchise Agreement, and pursuant to which the Franchisee and any director of the Franchisee, any Guarantor and any Nominated Operator must not:

- (a) before or after the end of the Franchise disclose any Confidential Information to any person other than to employees of the Franchisee to the extent necessary for the conduct of the Franchised Business; and
- (b) after the end of the Franchise or a Transfer, use, disclose, publish or otherwise make available to any third party any part of the Confidential Information:
- (i) causes a significant imbalance in the parties' rights and obligations arising under the Franchise Agreement;
- (ii) is not reasonably necessary in order to protect the legitimate interests of UPF; and
- (iii) would cause detriment to a Franchisee if it were to be applied or relied upon by UPF.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties'

rights and obligations arising under the Franchise Agreement as the definition of 'Confidential Information' in the Franchise Agreement is weighted entirely in favour of UPF, and is significantly broader than the information that UPF would be entitled to protect at law or in equity, including 'any other information, matter or thing which the Franchisor may, at its discretion, from time to time determine to be confidential'.

(b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.

(c) As to (c) above, reliance on this clause to allege a breach of confidential information by a Franchisee, including by varying the definition of 'confidential information' to include any information, matter, or thing, in circumstances where UPF would not be entitled to such protection at law or in equity would result in detriment to a Franchisee.

CC.2 Commission Agency Agreement

282L Each Commission Agency Agreement was an agreement to which Part 2-3 of the ACL applies.

Particulars

The Plaintiffs repeat paragraphs 65C to 65F and 66A, 66AA and 66B above.

282M Clause 11.4 of the Commission Agency Agreement, pursuant to which the rate of Commission and the Licence Fee (as those terms are defined in the Commission Agency Agreement) may be varied by UP in its sole, absolute and unfettered discretion from time to time by notice to a Commission Agent:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UP; and
- (c) would cause detriment to a Commission Agent if it were to be applied or relied upon by UP.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

(a) As to (a) above, the term causes a significant imbalance in the parties'

rights and obligations arising under the Commission Agency Agreement as it:

- (i) permits UP a wide discretion to increase the rate of Commission and the Licence Fee without any assessment of the individual circumstances of a Commission Agent and whether such an increase was financially sustainable for a Commission Agent; and
- (ii) does not allow any corresponding right of a Commission Agent to have the increase reviewed;
- (b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.
- (c) As to (c) above, increases in the rate of Commission and Licence Fee in reliance on this clause would cause financial detriment to a Franchisee.

282N Clause 14.4 of the Commission Agency Agreement, pursuant to which a Commission Agent must purchase from UP any of the products referred to in clause 14 which UP chooses to supply:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UP; and
- (c) would cause detriment to a Commission Agent if it were to be applied or relied upon by UP,

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement as it:
 - (i) prevents a Commission Agent from declining to purchase products that it did not order and may not need;
 - (ii) does not allow any corresponding right of a Commission Agent to have the supplies ordered by UP reviewed; and

(iii) allows UP to obtain a financial benefit at the expense and risk of the Commission Agent, who is not reimbursed if the products do not sell and are required to be recorded as wastage.

(b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.

(c) As to (c) above, for a Commission Agent to be required to purchase products from UP in reliance on this clause where those products were not ordered or needed by the Commission Agent, and where the Commission Agent is not reimbursed if the products do not sell and are recorded as wastage, would cause financial detriment to a Commission Agent.

282O Clause 23.1(a) of the Commission Agency Agreement, pursuant to which a Commission Agency Agreement may be terminated at any time for any reason upon UP giving 48 hours' notice, whether verbally or in writing, to a Commission Agent:

(a) causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement;

(b) is not reasonably necessary in order to protect the legitimate interests of UP; and

(c) would cause detriment to a Commission Agent if it were to be applied or relied upon by UP.

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

(a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement as it permits a broad and unilateral right of UP to terminate the Commission Agency Agreement.

(b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.

(c) As to (c) above, termination of the Commission Agency Agreement in reliance on this clause would cause detriment to a Commission Agent.

282P Clause 23.2(a) of the Commission Agency Agreement, pursuant to which a

Commission Agency Agreement may be terminated at any time by notice to a Commission Agent upon any breach by the Commission Agent of any provision of a Commission Agency Agreement:

- (a) causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement;
- (b) is not reasonably necessary in order to protect the legitimate interests of UP; and
- (c) would cause detriment to a Commission Agent if it were to be applied or relied upon by UP,

and by reason of the above amounts to an unfair contract term within the meaning of section 24 of the ACL.

Particulars

- (a) As to (a) above, the term causes a significant imbalance in the parties' rights and obligations arising under the Commission Agency Agreement as it permits a broad and unilateral right of UP to terminate the Commission Agency Agreement.
- (b) As to (b) above, the Plaintiffs rely on the presumption in section 24(4) of the ACL.
- (c) As to (c) above, termination of the Commission Agency Agreement in reliance on this clause would cause detriment to a Commission Agent.

DD. Restitution - Unauthorised Fines

283 During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP United Petroleum monitored the purchase and sale of stock by Franchisees and Commission Agents from Retail Suppliers.

Particulars

From time to time, employees of UPF and UP United Petroleum would conduct stocktakes of stock being sold by Franchisees and Commission Agents and compare it to the stock those Franchisees and Commission Agents had purchased from Retail Suppliers to ensure that only stock purchased from Retail Suppliers was being sold by those Franchisees and Commission Agents.

Examples of stock that were monitored are cigarettes and food and beverage items, including brand-named drinks such as Coca-Cola.

284 UPF and UP United Petroleum issued fines to Franchisees and Commission Agents

respectively who were identified as failing to comply with directions from UPF and UP, or for having sold stock purchased from suppliers other than Retail Suppliers (Unauthorised Fines).

Particulars

Fines could be for failing to have sufficient stock displayed, or failure to comply with a planogram.

To the extent the fines were issued to Franchisees by a representative of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

Particulars of the amount and frequency of the issue of Unauthorised Fines will be given in evidence and following discovery.

284A It was general business practice for Avi Silver to direct the United Petroleum Executive in Leadership Team Meetings to cause the Unauthorised Fines to be issued to Franchisees and Commission Agents by State Managers and Area Managers within the United Group.

Particulars

The directions were issued orally by Avi Silver at Leadership Team Meetings.

Leadership Team Meetings occurred in the boardroom at the headquarters of the United Group in Hawthorn, Victoria.

Leadership Team Meetings were usually held at least monthly, and occurred at both scheduled and unscheduled times, and occurred both during the week as well as on Saturdays.

The substance of each direction was an instruction to issue an Unauthorised Fine to a Franchisee or Commission Agent for failure to comply with instructions from UPF or UP, or for having sold stock purchased from suppliers other than Retail Suppliers.

The directions were given to David Szymczak, Chief Operating Officer of the United Group, and Gary Brinkworth, Chief Executive Officer

On about 28 September 2020, the JJ Trustees were threatened with a fine for "loss of sales" by Rohit Mahajan, Retail Site Reset Officer of UP.

In about October 2022, Yuq Sharma was threatened with a fine for having less doughnuts on display than was required by the planogram then in place by Jason Gorgioski, Head of United Pie Face – Operations and Training, UP.

Particulars of the fines and sites in the United Network involved are not within the

Plaintiffs' knowledge, and particulars of the same will be provided following discovery.

284B As a result of the directions of Avi Silver pleaded at paragraph 284A above, the United Petroleum Executive caused to be issued the Unauthorised Fines to Franchisees and Commission Agents by instructing State Managers and Area Managers to issue the Unauthorised Fines.

Particulars

On about 28 September 2020, the JJ Trustees were threatened with a fine for "loss of sales" by Rohit Mahajan, Retail Site Reset Officer of UP.

In about October 2022, Yug Sharma was threatened with a fine for having less doughnuts on display than was required by the planogram then in place by Jason Gorgioski, Head of United Pie Face – Operations and Training, UP.

Between about August 2018 and about August 2019, Sanjay Homes Pty Ltd, the Franchisee of United Maitland East, received approximately three fines for having insufficient funds in business account and direct debits failing.

Between about December 2021 and April 2023, Eclat Retail Pty Ltd, the Commission Agent of United Hastings, received approximately seven fines.

Particulars of the amount and frequency of the issue of Unauthorised Fines are not within the Plaintiffs' knowledge, and particulars of the same will be given in evidence and following discovery.

285 Franchisees and Commission Agents paid the Unauthorised Fines, or alternatively had those fines directly debited from their bank accounts by UPF and/or UP.

Particulars

Particulars of the Unauthorised Fines paid by Franchisees and Commission Agents or deducted from their bank accounts by UPF and/or UP will be given in evidence and following discovery.

286 UPF and UP ~~United Petroleum~~ had no contractual right under a Franchise Agreement or a Commission Agency Agreement to issue the Unauthorised Fines.

287 In the premises, Franchisees and Commission Agents who paid Unauthorised Fines are entitled to restitution of the Unauthorised Fines paid by those Franchisees and Commission Agents from UPF and UP respectively ~~United Petroleum~~.

EE. Breach of contract and Restitution – Bank Guarantees

287A During the Franchisee Relevant Period and Commission Agent Relevant Period, UPF and UP required Franchisees and Commission Agents respectively to provide a bank

guarantee as a form of security.

Particulars

Clause 31.1 of the Franchise Agreement

Clause 20.1 of the Commission Agency Agreement

287B On or about 9 April 2020, FNH obtained a bank guarantee in favour of UP in the sum of \$50,000 on instructions from an employee of UP.

Particulars

Email from Ravinder Singh of UP to Fahim Istanikzai dated 31 March 2020

To the extent the email was issued by a representative of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

238C The bank guarantee obtained by FNH on 9 April 2020 is stated to be security for the obligations of FNH "FOR ALL AND ANY MONIES OWED TO UNITED PETROLEUM PTY LTD".

287D On or about 23 May 2018, the JJ Trustees obtained a bank guarantee in favour of UP in the sum of \$50,000 on instructions from an employee of UP.

Particulars

Email from Ravinder Singh of UP to Jigar Patel dated 1 May 2018

To the extent the email was issued by a representative of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

238E The bank guarantee obtained by the JJ Trustees on 23 May 2018 is stated to be security for the obligations of the JJ Trustees "FOR ALL AND ANY MONIES OWED TO UNITED PETROLEUM PTY LTD".

287E During the Franchisee Relevant Period and Commission Agent Relevant Period, Franchisees and Commission Agents obtained bank guarantees in favour of UPF and UP respectively as security for payment for the sale of fuel delivered to Franchisees and Commission Agents.

Particulars

The number of Franchisees and Commission Agents who obtained bank guarantees in favour of UP is not currently within the Plaintiffs' knowledge.

Particulars of the bank guarantees obtained by Franchisees and Commission Agents

will be obtained following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

To the extent the directions to obtain bank guarantees were issued to Franchisees by a representative of UP, it was done with the implied or ostensible authority of UPF, and the Plaintiffs repeat paragraphs 66U and 66T above.

287G It was a term of the Franchise Agreement that the Franchisee must provide a bank guarantee of the amount stated in Item 26 of the Schedule.

Particulars

Clause 31.1 of the Franchise Agreement

287H It was a term of the Franchise Agreement that UPF must within 6 months after the Franchise Agreement has ended and the Franchisee has vacated the Licensed Area and performed all of its obligations under the Franchise Agreement return any remaining bank guarantee then held by the Franchisor (not applied in respect of clause 31.2 of the Franchise Agreement).

Particulars

Clause 31.3 of the Franchise Agreement

287I It was a term of the Franchise Agreement that Licensed Area means the premises specified in Item 5 of the Schedule of the Franchise Agreement or any other premises approved from time to time by UPF in its absolute discretion as the premises from where the Franchised Business must be conducted.

Particulars

Clause 1.1 of the Franchise Agreement

287J It was a term of the Commission Agency Agreement that the Commission Agent must give UP the Security Deposit set out in Schedule 9 of the Commission Agency Agreement.

Particulars

Clause 20.1 of the Commission Agency Agreement

287K It was a term of the Commission Agency Agreement that the Commission Agent must maintain the Security Deposit.

Particulars

Clause 20.1 of the Commission Agency Agreement

287L It was a term of the Commission Agency Agreement that when the Commission Agency

Agreement has expired and the Commission Agent has left the Premises, UP may retain the Security Deposit for at least twelve (12) months and thereafter return to the Commission Agent that part of the Security Deposit not needed to make good any loss.

Particulars

Clause 20.3 of the Commission Agency Agreement

- 287M Despite termination of the FNH Franchise Agreement by UPF, FNH has not had its bank guarantee released by UP.
- 287N Despite termination of the JJ Franchise Agreement by UPF, the JJ Trustees have not had their bank guarantee released by UP.
- 287O Some Franchisees and Commission Agents who are Group Members, and whose Franchise Agreement or Commission Agency Agreement has been terminated or expired, have not had their bank guarantees released by UP.

Particulars

The number of Franchisees and Commission Agents who obtained bank guarantees in favour of UP, and who have not had them released despite termination or expiry of their Franchise Agreement or Commission Agency Agreement, is not currently within the Plaintiffs' knowledge.

Particulars of the Franchisees and Commission Agents who have not had their bank guarantees released by UP will be obtained following discovery and following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

- 287P In the premises:
- (a) by failing to return the bank guarantee, UPF have breached clause 31.3 of the Franchise Agreement and FNH United is entitled to damages equivalent to the amount of its bank guarantee, plus pre-judgment interest;
- (b) alternatively, UP has failed to return the bank guarantee and FNH is entitled to restitution of the value of its bank guarantee amount, plus pre-judgment interest.

- 287Q In the premises:
- (a) by failing to return the bank guarantee, UPF have breached clause 31.3 of the Franchise Agreement and the JJ Trustees are entitled to damages equivalent to the amount of their bank guarantee, plus pre-judgment interest;
- (b) alternatively, UP has failed to return the bank guarantee and the JJ Trustees are

entitled to restitution of the value of their bank guarantee amount, plus pre-judgment interest.

287R In the premises, Franchisees and Commission Agents who obtained bank guarantees in favour of UP, and whose Franchise Agreement or Commission Agency Agreement has been terminated or expired, and who have not had their bank guarantees released, are entitled to:

- (a) damages from UPF for breach of clause 31.3 of the Franchise Agreement, plus pre-judgment interest with respect to Franchisees;
- (b) alternatively, restitution of their bank guarantee amounts, plus pre-judgment interest with respect to Franchisees; and
- (c) damages from UP for breach of clause 20.3 of the Commission Agency Agreement with respect to Commission Agents.

FF. Avi Silver

288 At all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, the Second Defendant, Avi Silver:

- (a) was a director of UPF and UP United Petroleum; and
- (b) along with Eddie Hirsch, exercised had ultimate control over United Petroleum and the United Group by reason of the directorships of UP, UPF, and United Petroleum Australia Pty Ltd, and the companies within the United Group (as pleaded at paragraphs 5 – 6A and 7A above); and
- (c) attended Leadership Team Meetings (as pleaded at paragraph 52I above).

289 Avi Silver, ~~along with Eddie Hirsch,~~ was ultimately responsible for:

- (a) negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
- (b) installing the Pie Face Franchise into sites in the United Network.

Particulars

The Plaintiffs refer to and repeat the matters in paragraphs 49A, 52F, and 52H above.

290 At all material times Avi Silver had knowledge of ~~was aware, or alternatively ought to have been aware,~~ of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group.

Particulars

The knowledge arises by reason of Mr Silver's participation in negotiating the

acquisition of the Pie Face Franchise on behalf of the United Group as pleaded at paragraph 49A above and installing the Pie Face Franchise into sites in the United Network as pleaded at paragraphs 52F and 52H above.

The knowledge includes but is not limited to knowledge of the following facts that:

- (i) Original Pie Face was placed into administration;
- (ii) at the time it was placed into administration, Original Pie Face was experiencing negative cash flow as referred to at paragraph 24 above;
- (iii) the DOCA between Original Pie Face and its creditors had failed as referred to at paragraph 44 above;
- (iv) Receivers were appointed to Original Pie Face;
- (v) Original Pie Face was placed into liquidation; and
- (vi) at the time that Receivers were appointed to Original Pie Face, it was estimated to owe unsecured creditors over \$50 million, as referred to at paragraph 48 above; and
- (vii) Original Pie Face continually operated at a loss and had to be supported by other companies within the Pie Face Group.

~~291 — At all material times and throughout the Relevant Period, Avi Silver was aware of the contents of the Franchise Agreement, Disclosure Document and the Operations Manual.~~

Particulars

~~The knowledge arises by reason of his ultimate control of United Petroleum and the United Group as pleaded at paragraph 288 above.~~

~~292 — At all material times and throughout the Relevant Period, Avi Silver was aware that those documents made no reference to the Pie Face Franchise, the Pie Face Site Directions, the Pie Face Audits, the Pie Face Overheads, the Allocated Pie Face Stock, the Allocated Retail Stock, the Pie Face Wastage, or the Retail Stock Wastage.~~

Particulars

~~The knowledge arises by reason of the matters pleaded at paragraph 291 above~~

~~293 — At all material times and throughout the Relevant Period, Avi Silver was responsible for negotiating the rebates from suppliers to the United Group, which rebates were received each time United Petroleum ordered (or supplied in the case of Pie Face Bakery) the Allocated Retail Stock and the Allocated Pie Face Stock.~~

Particulars

~~The knowledge arises by reason of his ultimate control of United Petroleum and the United Group as pleaded at paragraph 288 above.~~

294 — At all material times and throughout the Relevant Period, Avi Silver had access to information for Pie Face Sites that recorded the actual amount of Allocated Pie Face Stock being sold by individual Franchisees operating those sites.

Particulars

~~By reason of his directorship of United Petroleum, Avi Silver had access to the information to which United Petroleum had access, including the "point of sale" system operated by all sites in the United Network, which system showed what stock was being sold by individual Franchisees in the United Network, including the Allocated Pie Face Stock.~~

295 — At all material times and throughout the Relevant Period, Avi Silver in a position to assess whether or not Franchisees operating Pie Face Sites could reasonably be expected to sell, and were selling, the Allocated Pie Face Stock.

Particulars

~~The knowledge arises by reason of his ultimate control of United Petroleum and the United Group as pleaded at paragraph 288 above.~~

296 — At all material times and throughout the Relevant Period, Avi Silver had access to reports known as 'wastage reports' of individual Franchisees that recorded how much of the Allocated Pie Face Stock, and Allocated Retail Stock, was being disposed of as wastage.

Particulars

~~By reason of his directorship of United Petroleum, Avi Silver had access to the information to which United Petroleum had access, which information included wastage reports of individual Franchisees.~~

297 — At all material times and throughout the Relevant Period, as well as prior to the acquisition of the Pie Face Franchise, Avi Silver had access to profit and loss statements for individual Franchisees.

Particulars

~~By reason of his directorship of United Petroleum, Avi Silver had access to the information to which United Petroleum had access, which information included profit and loss statements for individual Franchisees.~~

~~The knowledge arises by reason of the matters pleaded in paragraphs 294 to 297 above.~~

298 — Despite the matters pleaded at paragraphs 290 to ~~Error! Reference source not found.~~ above, throughout the Relevant Period, Avi Silver continued to cause United Petroleum to install the Pie Face Franchise into sites in the United Network.

FF.1 Misleading or Deceptive Conduct – Accessorial Liability of Avi Silver

300 Avi Silver knew that the Original Pie Face Profitable Franchise Representation was made by UPF and UP.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that the Pie Face Franchise was a profitable franchise at the time that it was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by the United Group can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above) would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to the financial history of the Pie Face Franchise at the time that it was being franchised by Original Pie Face.

300A In relation to the Original Pie Face Profitable Franchise Representation, Avi Silver:

- (a) had knowledge of the essential facts that made the representation misleading or deceptive, or likely to mislead or deceive;
- (b) alternatively, was wilfully blind towards the essential facts that made the representation misleading or deceptive, or likely to mislead or deceive.

Particulars

The essential facts of which Mr Silver was aware of, or wilfully blind towards, that rendered the representation misleading or deceptive were:

- (a) the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290 above);
- (b) that the Pie Face Franchise had initially been placed into voluntary

administration and at that time was experiencing negative cash flow (as referred to at paragraph 24 above);

- (c) that the Pie Face Franchise subsequently had been placed into liquidation and was in receivership;
- (d) that the Pie Face Franchise owed unsecured creditors over \$50 million dollars (as referred to at paragraph 48 above);
- (e) that Original Pie Face had continually operated at a loss and was dependent on the other companies in the Pie Face Group to fund its working capital requirements (as pleaded at paragraph 24A above);
- (f) that the Pie Face Franchise installed in the United Network sold the same Pie Face stock using the same Pie Face Intellectual Property as Original Pie Face (as pleaded at paragraphs 50 and 77F – 77I above); and
- (g) the Franchise Document, Disclosure Document and Commission Agency Agreement made no reference to the financial history of the Pie Face Franchise at the time that it was being franchised by Original Pie Face or the actual predicted profitability of the Pie Face Franchise in the United Network; and
- (h) Throughout the Franchisee Relevant Period and the Commission Agent Relevant period, Mr Silver discussed the Pie Face Overheads (as pleaded at paragraph 74A above) and the Pie Face Wastage (as pleaded at paragraph 84A above) with the United Petroleum Executive at Leadership Team Meetings;
- (i) at all material times Mr Silver:
 - a. had access to information showing the actual amount of stock (including Allocated Pie Face Stock) being sold by the Plaintiffs and Franchisee and Commission Agent Group Members as pleaded at paragraphs 66H and 66I above;
 - b. had access to reports recording how much stock (including Allocated Pie Face Stock) was not being sold by the Plaintiffs and Franchisee and Commission Agent Group Members and being recorded as wastage as pleaded at paragraphs 66J and 66K above;
 - c. had access to information showing the daily profitability of every site in the United Network by reason of the Closing Day Sheets and the sales data generated through SwiftPOS as pleaded at paragraphs 66H – 66KKK above.

300B Avi Silver was involved in the contraventions of UP and UPF with respect to the Original Pie Face Profitable Franchise Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;
- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at

paragraphs 52G to 52H:

- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D:
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B:
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C:
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D:
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P:
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

300C Avi Silver knew that the Future Pie Face Profitable Franchise Representation was made by UPF and UP.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that the Pie Face Franchise could be a profitable franchise can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above) would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to the financial history of the Pie Face Franchise at the time that it was being franchised by Original Pie Face or the actual predicted profitability of the Pie Face Franchise in the United Network.

300D Avi Silver knew that UPF and UP had no reasonable grounds for making the Future Pie Face Profitable Franchise Representation.

Particulars

Mr Silver was aware:

- (a) of the financial history of the Pie Face Franchise at the time of its acquisition by

the United Group (as pleaded at paragraph 290 above)

- (b) that the Pie Face Franchise had initially been placed into voluntary administration and at that time was experiencing negative cash flow (as referred to at paragraph 24 above);
- (c) that the Pie Face Franchise subsequently had been placed into liquidation and was in receivership;
- (d) that the Pie Face Franchise owed unsecured creditors over \$50 million dollars (as referred to at paragraph 48 above);
- (e) that Original Pie Face had continually operated at a loss and was dependent on the other companies in the Pie Face Group to fund its working capital requirements (as pleaded at paragraph 24A above);
- (f) that the Pie Face Franchise installed in the United Network sold the same Pie Face stock using the same Pie Face Intellectual Property as Original Pie Face (as pleaded at paragraphs 50 and 77F – 77I above);
- (g) Throughout the Franchisee Relevant Period and the Commission Agent Relevant period, Mr Silver discussed the Pie Face Overheads (as pleaded at paragraph 74A above) and the Pie Face Wastage (as pleaded at paragraph 84A above) with the United Petroleum Executive at Leadership Team Meetings;
- (h) at all material times Mr Silver:
 - a. had access to information showing the actual amount of stock (including Allocated Pie Face Stock) being sold by the Plaintiffs and Franchisee and Commission Agent Group Members as pleaded at paragraphs 66H and 66I above;
 - b. had access to reports recording how much stock (including Allocated Pie Face Stock) was not being sold by the Plaintiffs and Franchisee and Commission Agent Group Members and being recorded as wastage as pleaded at paragraphs 66J and 66K above;
 - c. had access to information showing the daily profitability of every site in the United Network by reason of the Closing Day Sheets and the sales data generated through SwiftPOS as pleaded at paragraphs 66H – 66KKK above.

300E Avi Silver was involved in the contraventions of UP and UPF with respect to the Future Pie Face Profitable Franchise Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly

or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;
- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;

- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

300F Avi Silver knew that UPF and UP made the Original Pie Face Market Demand Representation.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that there would be strong market demand for the Pie Face products can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above) would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to the true market demand for Pie Face products at the time that the Pie Face Franchise was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by a member of the United Group.

300G In relation to the Original Pie Face Market Demand Representation, Avi Silver:

- (a) had knowledge of the facts that made the representation misleading or deceptive, or likely to mislead or deceive;
- (b) alternatively, was wilfully blind towards the facts that made the representation misleading or deceptive, or likely to mislead or deceive.

Particulars

The essential facts of which Mr Silver was aware that rendered the representation

misleading or deceptive were:

- (a) the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290 above);
- (b) that the Pie Face Franchise had initially been placed into voluntary administration and at that time was experiencing negative cash flow (as referred to at paragraph 24 above);
- (c) that the Pie Face Franchise subsequently had been placed into liquidation and was in receivership;
- (d) that the Pie Face Franchise owed unsecured creditors over \$50 million dollars (as referred to at paragraph 48 above);
- (e) that Original Pie Face had continually operated at a loss and was dependent on the other companies in the Pie Face Group to fund its working capital requirements (as pleaded at paragraph 24A above); and
- (f) that the Pie Face Franchise installed in the United Network sold the same Pie Face stock using the same Pie Face Intellectual Property as Original Pie Face (as pleaded at paragraphs 50 and 77F – 77I above).

300H Avi Silver was involved in the contraventions of UP and UPF with respect to Original Pie Face Market Demand Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Agtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum

Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;

- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

3001 Avi Silver knew that the Future Pie Face Market Demand Representation was made by UPF and UP.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that there would be strong market demand for Pie Face products on and from the time that the Pie Face Franchise was installed throughout the United Network can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above) would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference as to the actual predicted market demand for Pie Face products at the time that the Pie Face Franchise installed throughout the United Network

300J Avi Silver knew that UPF and UP had no reasonable grounds for making the Future Pie Face Market Demand Representation.

Particulars

Mr Silver was aware:

- (a) of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290 above);
- (b) that the Pie Face Franchise had initially been placed into voluntary administration and at that time was experiencing negative cash flow (as referred to at paragraph 24 above);
- (c) that the Pie Face Franchise subsequently had been placed into liquidation and was in receivership;
- (d) that the Pie Face Franchise owed unsecured creditors over \$50 million dollars (as referred to at paragraph 48 above);
- (e) that Original Pie Face had continually operated at a loss and was dependent on the other companies in the Pie Face Group to fund its working capital requirements (as pleaded at paragraph 24A above);
- (f) that the Pie Face Franchise installed in the United Network sold the same Pie Face stock using the same Pie Face Intellectual Property as Original Pie Face (as pleaded at paragraphs 50 and 77F – 77I above);

- (g) the Franchise Document, Disclosure Document and Commission Agency Agreement made no reference to the actual predicted market demand for Pie Face products at the time that the Pie Face Franchise installed throughout the United Network;
- (h) throughout the Franchisee Relevant Period and the Commission Agent Relevant period, Mr Silver discussed the Pie Face Overheads (as pleaded at paragraph 74A above) and the Pie Face Wastage (as pleaded at paragraph 84A above) with the United Petroleum Executive at Leadership Team Meetings;
- (i) at all material times, Mr Silver:
- a. had access to information showing the actual amount of stock (including Allocated Pie Face Stock) being sold by the Plaintiffs and Franchisee and Commission Agent Group Members as pleaded at paragraphs 66H and 66I above;
 - b. had access to reports recording how much stock (including Allocated Pie Face Stock) was not being sold by the Plaintiffs and Franchisee and Commission Agent Group Members and being recorded as wastage as pleaded at paragraphs 66J and 66K above;
 - c. had access to information showing the daily profitability of every site in the United Network by reason of the Closing Day Sheets and the sales data generated through SwiftPOS as pleaded at paragraphs 66H – 66KKK above.

300K Avi Silver was involved in the contraventions of UP and UPF with respect to Future Pie Face Market Demand Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum

Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii):

- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;
- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock

as pleaded in paragraph 90A.

300L Avi Silver knew that the Pie Face Increased Profit Representation was made by UP and UPF.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that the cost to a Franchisee or Commission Agent of retailing Pie Face products in the ordinary course of business would be exceeded by the revenue to be derived from retailing Pie Face products in the ordinary course of business, and so result in increased profit for Franchisees or Commission Agents can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above) would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to the likely costs of and likely revenue to be derived from retailing Pie Face products.

300M Avi Silver knew that UPF and UP had no reasonable grounds for making the Pie Face Increased Profit Representation.

Particulars

Mr Silver was aware:

- (a) of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290 above);
- (b) that the Pie Face Franchise had initially been placed into voluntary administration and at that time was experiencing negative cash flow (as referred to at paragraph 24 above);
- (c) that the Pie Face Franchise subsequently had been placed into liquidation and was in receivership;
- (d) that the Pie Face Franchise owed unsecured creditors over \$50 million dollars (as referred to at paragraph 48 above);
- (e) that Original Pie Face had continually operated at a loss and was dependent on the other companies in the Pie Face Group to fund its working capital requirements (as pleaded at paragraph 24A above);

- (f) that the Pie Face Franchise installed in the United Network sold the same Pie Face stock using the same Pie Face Intellectual Property as Original Pie Face (as pleaded at paragraphs 50 and 77F – 77I above):
- (g) the Franchise Document, Disclosure Document and Commission Agency Agreement made no reference to the actual predicted market demand for Pie Face products at the time that the Pie Face Franchise installed throughout the United Network; and
- (h) throughout the Franchisee Relevant Period and the Commission Agent Relevant period, Mr Silver discussed the Pie Face Overheads (as pleaded at paragraph 74A above) and the Pie Face Wastage (as pleaded at paragraph 84A above) with the United Petroleum Executive at Leadership Team Meetings;
- (i) at all material times, Mr Silver:
 - a. had access to information showing the actual amount of stock (including Allocated Pie Face Stock) being sold by the Plaintiffs and Franchisee and Commission Agent Group Members as pleaded at paragraphs 66H and 66I above;
 - b. had access to reports recording how much stock (including Allocated Pie Face Stock) was not being sold by the Plaintiffs and Franchisee and Commission Agent Group Members and being recorded as wastage as pleaded at paragraphs 66J and 66K above;
 - c. had access to information showing the daily profitability of every site in the United Network by reason of the Closing Day Sheets and the sales data generated through SwiftPOS as pleaded at paragraphs 66H – 66KKK above.

300N Avi Silver was involved in the contraventions of UP and UPF with respect to the Pie Face Increased Profit Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);

- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;
- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively

a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;

- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

300O Avi Silver knew that UPF and UP made the UPF No Minimum Inventory Representation and the UP No Minimum Inventory Representation respectively.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that there was no requirement for Franchisees to maintain a minimum amount of inventory, such as for Pie Face products, can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above), and who had reviewed the Franchise Document, Disclosure Document and Commission Agency Agreement, would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to any requirement for Franchisees or Commission Agents to maintain a minimum amount of inventory, such as for Pie Face products.

300P In relation to each of the UPF No Minimum Inventory Representation and the UP No Minimum Inventory Representation, Avi Silver:

- (a) had knowledge of the facts that made the representation misleading or deceptive, or likely to mislead or deceive;
- (b) alternatively, was wilfully blind towards the facts that made the representation misleading or deceptive, or likely to mislead or deceive.

Particulars

At all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew of the contents of the Franchise Agreement and the Commission Agency Agreement (as pleaded at paragraph 291 above). Mr Silver was also involved in the drafting of the Franchise Agreements and Commission Agency Agreements (as pleaded at paragraph 66S above), and it was Avi Silver's usual practice to execute each Franchise Agreement and Commission

Agency Agreement on behalf of UPF and UP respectively (as pleaded at paragraphs 12U and 12V above).

Accordingly, at all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew that those documents made no reference to Franchisees or Commission Agents being required to maintain a minimum amount of inventory, including of Pie Face Stock, and therefore represented that there would not be any obligation on a Franchisee or Commission Agent to maintain any minimum amount of inventory required to operate a site in the United Network.

Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Avi Silver directed the United Petroleum Executive in Leadership Team Meetings to allocate the Allocated Pie Face Stock and Allocated Retail Stock, and gave instructions to the United Petroleum Executive with respect to the Pie Face Site Directions (as pleaded at paragraph 75A above) which required certain amounts of Pie Face products to be maintained by Franchisees and Commission Agents.

Accordingly, in these circumstances and at all material times, Mr Silver knew that the true position was that Franchisees and Commission Agents would be required to maintain minimum amounts of inventory as directed by UPF and UP, including minimum amounts of retail stock allocated to them (which included the Allocated Retail Stock), and following the Acquisition Date, minimum levels of Pie Face stock (which included the Allocated Pie Face Stock).

300Q Avi Silver was involved in the contraventions of UP and UPF with respect to the UPF No Minimum Inventory Representation and the UP No Minimum Inventory Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum

Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii):

- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;
- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock

as pleaded in paragraph 90A.

300R Avi Silver knew that UPF and UP made the UPF No Purchase Obligation Representation and the UP No Purchase Obligation Representation respectively.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that Franchisees or Commission Agents were not obliged to acquire goods or services as directed by UPF and UP respectively, such as for Pie Face products, can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above), and who had reviewed the Franchise Document, Disclosure Document and Commission Agency Agreement, would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to Franchisees or Commission Agents being obliged to acquire goods or services as directed by UPF and UP respectively.

300S In relation to each of the UPF No Purchase Obligation Representation and the UP No Purchase Obligation Representation, Avi Silver:

- (a) had knowledge of the facts that made the representation misleading or deceptive, or likely to mislead or deceive;
- (b) alternatively, was wilfully blind towards the facts that made the representation misleading or deceptive, or likely to mislead or deceive.

Particulars

At all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew of the contents of the Franchise Agreement and the Commission Agency Agreement (as pleaded at paragraph 291 above). Mr Silver was also involved in the drafting of the Franchise Agreements and Commission Agency Agreements (as pleaded at paragraph 66S above), and it was Avi Silver's usual practice to execute each Franchise Agreement and Commission Agency Agreement on behalf of UPF and UP respectively (as pleaded at paragraphs 12U and 12V above).

Accordingly, at all material times and throughout the Franchisee Relevant Period

and Commission Agent Relevant Period, Mr Silver knew that those documents made no reference to Franchisees or Commission Agents being obliged to acquire goods or services as directed by UPF and UP respectively.

Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Avi Silver directed the United Petroleum Executive in Leadership Team Meetings to allocate the Allocated Pie Face Stock and Allocated Retail Stock, and gave instructions to the United Petroleum Executive with respect to the Pie Face Site Directions (as pleaded at paragraph 75A above), which required certain amounts of Pie Face products to be maintained by Franchisees and Commission Agents.

Accordingly, in these circumstances and at all material times, Mr Silver knew that the true position was that Franchisees and Commission Agents would be obliged to purchase stock as directed by UPF and UP, including minimum amounts of retail stock allocated to them (which included the Allocated Retail Stock), and following the Acquisition Date, minimum levels of Pie Face stock (which included the Allocated Pie Face Stock).

300T Avi Silver was involved in the contraventions of UP and UPF with respect to the UPF No Minimum Inventory Representation and the UP No Minimum Inventory Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Agtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and

convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;

- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

300U Avi Silver knew that UPF and UP made the UPF No Range Change Representation and the UP No Range Change Representation respectively.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and

Commission Agents that UPF and UP would not significantly change the range of goods or services required to be supplied by Franchisees and Commission Agents can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above), and who had reviewed the Franchise Document, Disclosure Document and Commission Agency Agreement, would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to UPF or UP significantly changing the range of goods or services required to be supplied by a Franchisee or Commission Agent.

Accordingly, at all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew that those documents represented that UPF and UP would not significantly change the range of goods or services required to be supplied by a Franchisee or Commission Agent.

300V In relation to each of the UPF No Range Change Representation and the UP No Range Change Representation, Avi Silver:

- (a) had knowledge of the facts that made the representation misleading or deceptive, or likely to mislead or deceive;
- (b) alternatively, was wilfully blind towards the facts that made the representation misleading or deceptive, or likely to mislead or deceive.

Particulars

At all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew of the contents of the Franchise Agreement and the Commission Agency Agreement (as pleaded at paragraph 291 above). Mr Silver was also involved in the drafting of the Franchise Agreements and Commission Agency Agreements (as pleaded at paragraph 66S above), and it was Avi Silver's usual practice to execute each Franchise Agreement and Commission Agency Agreement on behalf of UPF and UP respectively (as pleaded at paragraphs 12U and 12V above).

Accordingly, at all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew that those documents made no reference to UPF or UP significantly changing the range of goods or services

required to be supplied by a Franchisee or Commission Agent.

Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Avi Silver directed the United Petroleum Executive in Leadership Team Meetings to allocate the Allocated Pie Face Stock and Allocated Retail Stock, and gave instructions to the United Petroleum Executive with respect to the Pie Face Site Directions (as pleaded at paragraph 75A above), which required certain amounts of Pie Face products to be maintained by Franchisees and Commission Agents.

Accordingly, in these circumstances and at all material times, Mr Silver knew that the true position was that UPF and UP would significantly change the range of goods or services required to be supplied by a Franchisee or Commission Agent, including by way of minimum amounts of retail stock allocated to them (which included the Allocated Retail Stock), and following the Acquisition Date, minimum levels of Pie Face stock (which included the Allocated Pie Face Stock).

300W Avi Silver was involved in the contraventions of UP and UPF with respect to the UPF No Range Change Representation and the UP No Range Change Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the

United Network as pleaded at paragraph 52F:

- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United Group; and
 - ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

300X Avi Silver knew that UPF and UP made the UPF Stock Control Representation and the UP Stock Control Representation respectively.

Particulars

Mr Silver's knowledge that UPF and UP were representing to Franchisees and Commission Agents that Franchisees and Commission Agents would be able to control their own stock levels, and would not be forced to pay for stock they did not

order or need, can be inferred in circumstances where any reasonable director in the position of Mr Silver, with responsibility for the implementation, and ongoing management, of the Pie Face Franchise within the United Network, and its rollout (as pleaded at paragraphs 49A, and 52F and 52H above), and who had reviewed the Franchise Document, Disclosure Document and Commission Agency Agreement, would be aware that such a representation was made.

To the extent that the making of the representation arose by silence, by his execution of the Franchise Document, Disclosure Document and Commission Agency Agreement, Mr Silver was aware that those documents made no reference to Franchisees and Commission Agents not being able to control their own stock levels and being forced to pay for stock they did not order or need.

Accordingly, at all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew that those documents represented that Franchisees and Commission Agents would be able to control their own stock levels, and would not be forced to pay for stock they did not order or need.

300Y In relation to each of the UPF Stock Control Representation and the UP Stock Control Representation, Avi Silver:

- (a) had knowledge of the facts that made the representation misleading or deceptive, or likely to mislead or deceive;
- (b) alternatively, was wilfully blind towards the facts that made the representation misleading or deceptive, or likely to mislead or deceive.

Particulars

At all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew of the contents of the Franchise Agreement and the Commission Agency Agreement (as pleaded at paragraph 291 above). Mr Silver was also involved in the drafting of the Franchise Agreements and Commission Agency Agreements (as pleaded at paragraph 66S above), and it was Avi Silver's usual practice to execute each Franchise Agreement and Commission Agency Agreement on behalf of UPF and UP respectively (as pleaded at paragraphs 12U and 12V above).

Accordingly, at all material times and throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Mr Silver knew that those documents made no reference to Franchisees and Commission Agents not being able to control their own stock levels and being forced to pay for stock they did not order or need .

Throughout the Franchisee Relevant Period and Commission Agent Relevant Period, Avi Silver directed the United Petroleum Executive in Leadership Team Meetings to allocate the Allocated Pie Face Stock and Allocated Retail Stock, and gave instructions to the United Petroleum Executive with respect to the Pie Face Site Directions (as pleaded at paragraph 75A above), which required certain amounts of Pie Face products to be maintained by Franchisees and Commission Agents.

Accordingly, in these circumstances and at all material times, Mr Silver knew that the true position was that Franchisees and Commission Agents would not be able to control their own stock levels and would be forced to pay for stock that they did not order or need.

300Z Avi Silver was involved in the contraventions of UP and UPF with respect to the UPF Stock Control Representation and the UP Stock Control Representation within the meaning of section 2 of the ACL, in that Avi Silver (a) aided, abetted, counselled or procured the contravention, and/or (b) was directly or indirectly, knowingly concerned in, or party to, the contravention.

Particulars

- a. Mr Silver's was a director of UPF as pleaded at paragraph 5(d);
- b. Mr Silver had sole control of Aqtan, a 50% shareholder of UPF as pleaded at paragraph 5(e);
- c. Mr Silver's was a director of UP as pleaded at paragraph 6A(d);
- d. Mr Silver's was a director of the sole shareholder of UP, United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(i);
- e. Mr Silver had sole control of Kinlee Pty Ltd, a 50% shareholder of United Petroleum Australia Pty Ltd, as pleaded at paragraph 6A(e)(ii);
- f. the United Petroleum Executive reported to, and took direction from, Mr Silver as pleaded at paragraph 52D;
- g. Mr Silver predominantly gave instructions and directions to the United Petroleum Executive, and Managers employed by UPF and UP, with respect to the retail and convenience store offering of sites within the United Network, which included the implementation, and ongoing management, of the Pie Face Franchise within the United Network as pleaded at paragraph 52F;
- h. Mr Avi Silver was ultimately responsible for (as pleaded at paragraphs 49A and 52F):
 - i. negotiating the acquisition of the Pie Face Franchise on behalf of the United

Group; and

- ii. installing the Pie Face Franchise into sites in the United Network;
- i. at all material times Avi Silver was aware of the financial history of the Pie Face Franchise at the time of its acquisition by the United Group (as pleaded at paragraph 290);
- j. Mr Silver amended the Delivery Aggregators Pricing Matrix (as pleaded at paragraph 88N);
- k. Mr Silver directed the United Petroleum Executive to issue Allocated Retail Stock throughout the United Network as pleaded at paragraph 90A;
- l. Mr Silver amended and approved the Pie Face Rollout Schedule, as pleaded at paragraphs 52G to 52H;
- m. Mr Silver directed the United Petroleum Executive to increase the amount of a Franchise Service Fee for individual Franchisees as pleaded at paragraph 58D;
- n. Mr Silver directed the United Petroleum Executive to increase the amount of a Licence Fee for individual Commission Agents as pleaded at paragraph 66B;
- o. Mr Silver approved the lists of Allocated Pie Face Stock as pleaded in paragraph 77C;
- p. Mr Silver directed the United Petroleum Executive to issue Allocated Pie Face Stock throughout the United Network as pleaded at paragraph 77D;
- q. a "Pricing Matrix" for a stock category had to be approved by Mr Silver, or alternatively a member of the United Petroleum Executive acting on instructions of Mr Silver, as pleaded at paragraph 66P;
- r. Mr Silver directed the United Petroleum Executive to issue the Allocated Retail Stock as pleaded in paragraph 90A.

Avi Silver was aware that the following representations were made.

- ~~(a) the Original Pie Face Profitable Franchise Representation; and/or~~
- ~~(b) the Future Pie Face Profitable Franchise Representation; and/or~~
- ~~(c) the Original Pie Face Market Demand Representation; and/or~~
- ~~(d) the Future Pie Face Market Demand Representation; and/or~~
- ~~(e) the Pie Face Increased Profit Representation; and/or~~
- ~~(f) the No Minimum Inventory Representation; and/or~~
- ~~(g) the No Purchase Obligation Representation; and/or~~

~~(h) the No Related Party Supplier Representation; and/or~~

~~(i) the No Range Change Representation; and/or~~

~~(j) the No Business Change Representation.~~

Particulars

~~The knowledge arises by reason of the matters pleaded at paragraph 288 and 289 above.~~

301 ~~Avi Silver had actual knowledge (or wilful blindness towards) the facts that made the pleaded in paragraph 0 (individually or in any combination) misleading or deceptive, or likely to mislead or deceive.~~

Particulars

~~The knowledge arises by reason of the matters pleaded at paragraph 288 and 289 above.~~

302 ~~By reason of the matters pleaded in paragraphs 288 to 300Q above, Avi Silver was involved in the contraventions of United Petroleum pleaded at paragraphs 162 to 224 above within the meaning of section 2 of the ACL, and the Plaintiffs and Group Members are entitled to recover the amount of their loss or damage from Avi Silver pursuant to s 236 of the ACL.~~

303 ~~By reason of the matters pleaded in paragraphs 288 to **Error! Reference source not found.** above, Avi Silver had actual knowledge (or wilful blindness towards) the circumstances in paragraphs 266 to 281 above which made the conduct of United Petroleum pleaded at paragraphs 270 to 281 above unconscionable within the meaning of s 21 of the ACL.~~

Particulars

~~The knowledge arises by reason of: the matters pleaded at paragraph 288 and 289 above.~~

304 ~~By reason of the matters pleaded in paragraph 298 above, Avi Silver was involved in the contraventions of United Petroleum pleaded at paragraph 282 above within the meaning of section 2 of the ACL, and the Plaintiffs and Group Members are entitled to recover the amount of their loss or damage from Avi Silver pursuant to s 236 of the ACL.~~

GG. Loss and Damage

GG.1 Loss and Damage – FNH and Mr Istanikzai

305 By reason of the:

- (a) Short Form Oilcode Disclosure Omissions;

- (b) UPF Post Acquisition Contravening Representations;
- (c) ~~Pie Face~~ unconscionable conduct of UPF;
- (d) Franchise Agreement Breaches;
- (e) Franchising Code Breaches;

individually and/or together, FNH and Mr Istanikzai suffered loss and damage, being with respect to FNH and Mr Istanikzai:

- (a) entry into the FNH Franchise Agreement as Franchisee and Guarantor respectively;
and

with respect to FNH:

- (b) the FNH Upfront Costs;
- ~~(c) the FNH Incidental Costs;~~
- (d) the FNH Takeover Costs;
- (e) the FNH Ongoing Costs;
- (f) the costs of the Retail Stock Wastage;
- (g) the costs of the Pie Face Course;
- (h) the costs of the Pie Face Wastage;
- (i) the costs associated with Pie Face Team Members;
- ~~(j) the costs associated with the General Overheads; and~~
- (k) the costs associated with the Pie Face Overheads.

Particulars

- i. but for the UPF Post Acquisition Contravening Representations, FNH and Mr Istanikzai would not have entered into the FNH Franchise Agreement as pleaded at paragraph 226 above, and so would not have suffered loss and damage (including loss and damage within the meaning of section 236 of the ACL) by reason of entry into that agreement;
- ii. the loss and damage suffered by Mr Istanikzai in his capacity as Guarantor extends to the ongoing liability under the guarantees and indemnities pleaded at paragraphs 12M – 12Q above;
- iii. but for the Franchising Code Breaches, FNH and Mr Istanikzai would not have entered into the FNH Franchise Agreement as pleaded at paragraph 123A above, and so would not have suffered loss and damage by reason of entry

into that agreement as well as the costs in (b) – (k) above:

- iv. but for the Short Form Oilcode Disclosure Omissions, FNH and Mr Istanikzai would not have entered into the FNH Franchise Agreement as pleaded at paragraph 161A above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (b) – (k) above;
- v. by reason of the unconscionable conduct of UPF and Franchise Agreement Breaches, FNH suffered the loss in sub-paragraphs (f)- (k) above, being:
- (f) the costs of the Retail Stock Wastage;
- (g) the costs of the Pie Face Course;
- (h) the costs of the Pie Face Wastage;
- (i) the costs associated with Pie Face Team Members; (j) the costs associated with the General Overheads; and
- (k) the costs associated with the Pie Face Overheads.

306 Mr Istanikzai's loss extends to:

- (a) loss of income; and
- (b) loss of superannuation arising from loss of earnings.

Particulars

The loss of income and superannuation was suffered by Mr Istanikzai in his capacity as guarantor of FNH's obligations under the FNH Franchise Agreement, as Mr Istanikzai was required to use moneys that would otherwise have paid his income and superannuation to fund FNH's obligations under the Franchise Agreement or risk the guarantee being enforced.

Particulars of Mr Istanikzai's loss of income and loss of superannuation will be given in evidence.

307 ~~Mr Istanikzai's loss and damage includes non-economic loss within the meaning of s 87D of the CCA, including for:~~

- ~~(a) pain and suffering;~~
- ~~(b) anxiety; and~~
- ~~(c) depression.~~

Particulars

Particulars of Mr Istanikzai's non-economic loss will be provided in the Plaintiffs'

~~lay and expert evidence.~~

GG.2 ~~Loss and Damage~~— the JJ Trustees

308 By reason of the:

- (a) Short-Form Oilcode Disclosure Omissions;
- (b) UPF Pre-Acquisition Contravening Representations;
- (c) Franchise Agreement Breaches;
- (d) ~~Pie Face~~ unconscionable conduct of UPF;
- (e) Franchising Code Breaches;

individually and/or together, the JJ Trustees suffered loss and damage, being in their capacities as Franchisees and Guarantors:

- (a) entry into the JJ Agreement; and
and in their capacities as Franchisees;
- (b) the JJ Upfront Costs;
- ~~(c) the JJ Incidental Costs;~~
- (d) the JJ Takeover Costs;
- (e) the JJ Ongoing Costs;
- (f) the costs of the Retail Stock Wastage;
- (g) the costs of the Pie Face Course;
- (h) the costs of the Pie Face Wastage;
- (i) the costs associated with Pie Face Team Members;
- (j) ~~the costs associated with the General Overheads;~~ and
- (k) the costs associated with the Pie Face Overheads.

Particulars

- i. but for the UPF Pre-Acquisition Contravening Representations, the JJ Trustees would not have entered into the JJ Franchise Agreement as pleaded at paragraph 228 above, and so would not have suffered loss and damage (including loss and damage within the meaning of section 236 of the ACL) by reason of entry into that agreement as well as the costs in (b) – (k) above;
- ii. The loss and damage suffered by the JJ Trustees in their capacity as Guarantors extends to the ongoing liability under the guarantees and

indemnities pleaded at paragraphs 12M – 12Q above;

- iii. but for the Franchising Code Breaches, the JJ Trustees would not have entered into the JJ Franchise Agreement as pleaded at paragraph 123B above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (b) – (k) above;
- iv. but for the Short Form Oilcode Disclosure Omissions, the JJ Trustees would not have entered into the JJ Franchise Agreement as pleaded at paragraph 161B above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (b) – (k) above;
- v. by reason of the unconscionable conduct of UPF and Franchise Agreement Breaches, the JJ Trustees suffered the loss in sub-paragraphs (f)- (k) above, being:
 - i. the costs of the Retail Stock Wastage;
 - ii. the costs of the Pie Face Course;
 - iii. the costs of the Pie Face Wastage;
 - iv. the costs associated with Pie Face Team Members; (j) the costs associated with the General Overheads; and
 - v. the costs associated with the Pie Face Overheads.

308A The loss of the JJ Trustees extends to:

- (a) loss of income; and
- (b) loss of superannuation arising from loss of earnings.

Particulars

The JJ Trustees were required to use moneys that would otherwise have paid their income and superannuation to fund their obligations under the JJ Franchise Agreement or risk their guarantees being enforced.

Particulars of the JJ Trustees' loss of income and loss of superannuation will be given in evidence.

GG.3 Yug Sharma

309B By reason of the:

- (a) Short Form Oilcode Disclosure Omissions;
- (b) UP Post Acquisition Contravening Representations;

- (c) unconscionable conduct of UP;
- (d) Commission Agency Agreement Breaches;
- (e) Franchising Code Breaches;

individually and/or together, Yug Sharma suffered loss and damage, being:

- (f) entry into the Yug Sharma Agreement as a Commission Agent;
- (g) the Yug Sharma Upfront Costs;
- (h) the Yug Sharma Ongoing Costs;
- (i) the costs of the Retail Stock Wastage;
- (j) the costs of the Pie Face Course;
- (k) the costs of the Pie Face Wastage;
- (l) the costs associated with Pie Face Team Members; and
- (m) the costs associated with the Pie Face Overheads.

Particulars

- (i) but for the UP Post Acquisition Contravening Representations, Yug Sharma would not have entered into the Yug Sharma Agreement as pleaded at paragraph 228D above, and so would not have suffered loss and damage (including loss and damage within the meaning of section 236 of the ACL) by reason of entry into that agreement;
- (ii) but for the Franchising Code Breaches, Yug Sharma would not have entered into the Yug Sharma Agreement as pleaded at paragraph 123BB above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (g) – (m) above;
- (iii) but for the Short Form Oilcode Disclosure Omissions, Yug Sharma would not have entered into the Yug Sharma Agreement as pleaded at paragraph 161BB above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (g) – (m) above;
- (iv) by reason of the unconscionable conduct of UP and Commission Agency Agreement Breaches, Yug Sharma suffered the loss in sub-paragraphs (f)- (m) above.

GG.4 Loss and Damage— Franchisees and Guarantors who had Pie Face Sites

309 By reason of the:

- (a) Short-Form Oilcode Disclosure Omissions and/or Long Form Oilcode Disclosure Omissions;
- (b) Post Acquisition Contravening Representations or UPF Pre-Acquisition Contravening Representations;
- (c) Franchise Agreement Breaches;
- (d) Franchising Franchise Code Breaches;
- (e) ~~Pie Face~~ unconscionable conduct of UPF;

individually and/or together, Franchisees and Guarantors who had Pie Face Sites suffered loss and damage, being with respect to Franchisees and Guarantors:

- (a) entry into their Franchise Agreements; and
with respect to Franchisees:
- (b) the Upfront Costs;
- ~~(c) the Incidental Costs;~~
- (d) the Takeover Costs;
- (e) the Ongoing Costs;
- (f) the costs of the Retail Stock Wastage;
- (g) the costs of the Pie Face Course;
- (h) the costs of the Pie Face Wastage;
- (i) the costs associated with Pie Face Team Members;
- (j) ~~the costs associated with the General Overheads~~; and
- (k) the costs associated with the Pie Face Overheads.

Particulars

- i. but for the UPF Post Acquisition Contravening Representations and/or UPF Pre-Acquisition Contravening Representations, Franchisees who had Pie Face Sites and their Guarantors would not have entered into their Franchise Agreements as pleaded at paragraph 230 above, and so would not have suffered loss and damage (including loss and damage within the meaning of section 236 of the ACL) by reason of entry into those agreements as well as

the costs in (b) – (k) above:

- ii. The loss and damage suffered by the Guarantors in their capacity as Guarantors extends to their ongoing liability under the guarantees and indemnities pleaded at paragraphs 12M – 12Q above;
- iii. but for the Franchising Code Breaches, the Franchisees who had Pie Face Sites would not have entered into their agreements as pleaded in paragraph 123C above, and suffered loss and damage by reason of their entry into those agreements;
- iv. but for the Short Form Oilcode Disclosure Omissions and/or Long Form Oilcode Disclosure Omissions, Franchisees who had Pie Face Sites would not have entered into their Franchise Agreements as pleaded at paragraph 161C above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (b) – (k) above;
- v. by reason of the unconscionable conduct of UPF and/or Franchise Agreement Breaches, Franchisees who had Pie Face Sites suffered the loss in sub-paragraphs (f)- (k) above

Further particulars of the loss and damage suffered by Franchisees who had Pie Face Sites will be provided following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when necessary for a determination.

309A The loss of Franchisees and Guarantors extends to:

- (a) loss of income; and
- (b) loss of superannuation arising from loss of earnings.

Particulars

The Franchisees and Guarantors were required to use moneys that would otherwise have paid their income and superannuation to fund their obligations under their Franchise Agreements or risk their guarantees being enforced.

Particulars of the loss of income and loss of superannuation of Group Members will be given in evidence following discovery and following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

GG.5 Commission Agents and Guarantors who had Pie Face Sites

309B By reason of the:

- (a) Short-Form Oilcode Disclosure Omissions and/or Long Form Oilcode Disclosure Omissions;
- (b) Post Acquisition Contravening Representations and UP Pre-Acquisition Contravening Representations;
- (c) Commission Agency Agreement Breaches; and
- (d) unconscionable conduct of UP;
- (e) Franchising Code Breaches;

individually and/or together, Commission Agents and Guarantors who had Pie Face Sites suffered loss and damage, being with respect to Commission Agents and Guarantors:

- (a) entry into their Commission Agency Agreements; and
with respect to Commission Agents:
- (b) the licence fees (sometimes described as “rent”) to UP;
- (c) the Upfront Stock Costs;
- (d) the costs of the Retail Stock Wastage;
- (e) the costs of the Pie Face Course;
- (f) the costs of the Pie Face Wastage;
- (g) the costs associated with Pie Face Team Members;
- (h) the costs associated with the Pie Face Overheads.

Particulars

- (i) but for the UP Post Acquisition Contravening Representations and/or UP Pre-Acquisition Contravening Representations, Commission Agents who had Pie Face Sites and their Guarantors would not have entered into their Commission Agency Agreements, and so would not have suffered loss and damage (including loss and damage within the meaning of section 236 of the ACL) by reason of entry into those agreements as well as the costs in (b) – (h) above;
- (ii) The loss and damage suffered by the Guarantors in their capacity as Guarantors extends to their ongoing liability under the guarantees and indemnities as pleaded at paragraphs 12R to 12T above;
- (iii) but for Commission Agency Agreement Breaches, the Commission

Agents who had Pie Face Sites would not have suffered loss and damage by reason of the costs in (c) – (h) above:

- (iv) but for the Short Form Oilcode Disclosure Omissions and/or Long Form Oilcode Disclosure Omissions, Commission Agents who had Pie Face Sites would not have entered into their Commission Agency Agreements as pleaded at paragraph 161C above, and so would not have suffered loss and damage by reason of entry into that agreement as well as the costs in (b) – (h) above:
- (v) by reason of the unconscionable conduct of UP and/or Commission Agency Agreement Breaches, Commission Agents who had Pie Face Sites suffered the loss in sub-paragraphs (c) - (h) above.

309C The loss of Commission Agents and Guarantors extends to:

- (a) loss of income; and
- (b) loss of superannuation arising from loss of earnings.

Particulars

Commission Agents and Guarantors were required to use moneys that would otherwise have paid their income and superannuation to fund their obligations under their Commission Agency Agreements or risk their guarantees being enforced.

Particulars of the loss of income and loss of superannuation of Group Members will be given in evidence following discovery and following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of Group Members.

GG.6 Loss and Damage Franchisees and Commission Agents - Allocated Retail Stock who did not have Pie Face Sites

310 By reason of the Allocated Retail Stock, Franchisees ~~who did not have Pie Face Sites~~ suffered loss and damage, being the Retail Stock Wastage.

Particulars

Particulars of the Retail Stock Wastage will be given in evidence.

Further particulars of the loss and damage suffered by ~~the~~ Franchisees with respect to the Retail Stock Wastage who did not have Pie Face Sites will be provided following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when necessary for a determination.

310A By reason of the Allocated Retail Stock, Commission Agents suffered loss and damage,

being the Retail Stock Wastage.

Particulars

Particulars of the Retail Stock Wastage will be given in evidence.

Further particulars of the loss and damage suffered by Commission Agents-with respect to the Retail Stock Wastage will be provided following the determination of the Plaintiffs' claims and identified common issues at an initial trial and if and when necessary for a determination.

HH. Common Questions

311 The following common questions of fact or law arise in these proceedings.

311A Whether UPF and/or UP gave the Pie Face Site Directions to Franchisees and Commission Agents who operated Pie Face Sites.

311B If so, whether UP was acting as agent of UPF in giving Pie Face Site Directions to Franchisees who operated Pie Face Sites.

311C Whether UPF and/or UP required Franchisees and Commission Agents who had Pie Face Sites to employ Pie Face Team Members.

311D If so, whether UP was acting as agent of UPF in requiring Franchisees who had Pie Face Sites to employ Pie Face Team Members.

311E Whether UPF and/or UP required Franchisees and Commission Agents who operated Pie Face Sites to establish accounts Pie Face Suppliers.

311F If so, whether UP was acting as agent of UPF in requiring Franchisees who operated Pie Face Sites to establish accounts with Pie Face Suppliers.

311G Whether UPF and/or UP required Franchisees and Commission Agents who operated Pie Face Sites to incur the Pie Face Course Costs.

311H If so, whether UP was acting as agent of UPF in requiring Franchisees who operated Pie Face Sites to incur the Pie Face Course Costs.

311I Whether UPF and/or UP required Franchisees and Commission Agents who operated Pie Face Sites to incur the Pie Face Uniform Costs.

311J If so, whether UP was acting as agent of UPF in requiring Franchisees who operated Pie Face Sites to incur the Pie Face Uniform Costs.

311K Whether UPF and/or UP ordered and sent to Franchisees and Commission Agents who operated Pie Face Sites the Allocated Pie Face Stock.

- 311L If so, whether UP was acting as agent of UPF ordering and sending to Franchisees who operated Pie Face Sites the Allocated Pie Face Stock.
- 311M Whether UPF and/or UP ordered and sent to Franchisees and Commission Agents who operated the Allocated Retail Stock.
- 311N If so, whether UP was acting as agent of UPF ordering and sending to Franchisees the Allocated Retail Stock.
- 311O Whether Group Members who operated Pie Face Sites incurred the Pie Face Overheads.
- 311P Whether Group Members who operated Pie Face Sites were subject to the Pie Face Audits.
- 311Q Whether Group Members who operated Pie Face Sites incurred the Pie Face Wastage.
- 311R Whether Group Members incurred the Retail Stock Wastage.

The Franchising Code

- 312 Whether UPF and/or UP ~~United Petroleum~~ engaged in any of the Franchising Code Breaches.

The Oilcode 2006 and Oilcode 2017

- 313 Whether UPF and/or UP ~~United Petroleum~~ engaged in any of the Short Form Oilcode Disclosure Omissions.
- 314 Whether UPF and/or UP ~~United Petroleum~~ engaged in any of the Long Form Oilcode Disclosure Omissions.

Misleading or deceptive conduct

- 315 Whether UPF and/or UP ~~United Petroleum~~ made the Original Pie Face Profitable Franchise Representation.
- 316 Whether UPF and/or UP ~~United Petroleum~~ made the Future Pie Face Profitable Franchise Representation.
- 317 Whether UPF and/or UP ~~United Petroleum~~ made the Original Pie Face Market Demand Representation.
- 318 Whether UPF and/or UP ~~United Petroleum~~ made the Future Pie Face Market Demand Representation.
- 319 Whether UPF and/or UP ~~United Petroleum~~ made the Pie Face Increased Profit Representation.
- 320 Whether UPF and/or UP ~~United Petroleum~~ made the UPF No Minimum Inventory

Representation or UP No Minimum Inventory Representation.

- 321 Whether UPF and/or UP United Petroleum made the UPF No Purchase Obligation Representation or UP No Purchase Obligation Representation.
- 322 Whether UPF and/or UP United Petroleum made the UPF Stock Control Representation or the UP Stock Control Representation No Related Party Supplier Representation.
- 323 Whether UPF and/or UP United Petroleum made the UPF No Range Change Representation or UP No Range Change Representation.
- ~~324 Whether United Petroleum made the No Business Change Representation.~~
- 325 Whether any of these representations were made in trade or commerce.
- 326 Whether any of these representations were misleading or deceptive or likely to mislead or deceive.
- 327 Whether the making of any of these representations constitute a breach of section 18 of the ACL.
- 327A Whether Avi Silver was involved in the misleading or deceptive conduct of UPF and/or UP within the meaning of section 2 of the ACL.

Breach of Contract

- 328 Whether UPF United Petroleum owed any of the Franchisees an Additional Activities Obligation.
- 329 Whether UPF United Petroleum breached its Additional Activities Obligation.
- 330 Whether UPF United Petroleum owed any of the Franchisees a Duty of Cooperation.
- 331 Whether either UPF and/or UP United Petroleum breached its Duty of Cooperation.
- 332 Whether either UPF and/or UP United Petroleum owed any of the Franchisees or Commission Agents a Duty of Good Faith.
- 333 Whether either UPF and/or UP United Petroleum breached its Duty of Good Faith.
- 334 Whether UPF United Petroleum engaged in any of the Franchise Agreement Breaches.
- 334A Whether UP engaged in any of the Commission Agency Agreement Breaches.

Unconscionable conduct

- 335 Whether UPF and/or UP United Petroleum engaged in unconscionable conduct within the meaning of s 21 of the ACL ~~the Pie Face Unconscionable Conduct.~~

335A Whether Avi Silver was involved in the unconscionable conduct of UPF and/or UP within the meaning of section 2 of the ACL.

Breach of Contract and Restitution – Unauthorised Fines and Bank Guarantees

336 Whether Franchisees and/or Commission Agents have a right to restitution from UPF and/or UP United Petroleum in respect of the Unauthorised Fines

336A Whether Franchisees and/or Commission Agents have a right to damages or restitution from UPF and/or UP in respect of the Bank Guarantees.

Unfair Terms

336B Whether the Franchise Agreement contains any of the alleged unfair contract terms within the meaning of section 24 of the ACL.

336C Whether the Commission Agency Agreement contains any of the alleged unfair contract terms within the meaning of section 24 of the ACL.

Loss and Damage

337 What are the categories or heads of loss and damage that a Group Member could be compensated for?

337A What would be the appropriate remedy for that loss and damage?

338 What are the categories or heads of loss and damage that a Guarantor could be compensated for?

338A What would be the appropriate remedy for that loss or damage?

GLOSSARY

Term	Paragraph number	Definition
2018 Westgate Commission Agent Meeting	88E	The Leadership Team Meeting held in mid to late 2018 at the headquarters of the United Group at which Avi Silver and the Westgate Commission Agent were present

Term	Paragraph number	Definition
ACL	163	Individually or together: (a) Australian Consumer Law and Fair Trading Act 2012 (Vic); (b) Fair Trading Act 1987 (NSW); (c) Australian Consumer Law (Tasmania) Act 2010 (Tas); (d) Fair Trading Act 1989 (Qld); (e) Fair Trading Act 2010 (WA); (f) Fair Trading Act 1987 (SA); (g) Consumer Affairs and Fair Trading Act (NT); (h) Fair Trading (Australian Consumer Law) Act 1992 (ACT); and/or (i) Competition and Consumer Act 2010 (Cth)
Acquisition Date	49	On or about 13 April 2017 a member of the United Group acquired the Pie Face Franchise and the Pie Face Intellectual Property
Act	1	Corporations Act 2001 (Cth)
Additional Activity	253	Additional activities in the Franchise Operations Manual which the Franchisee may wish to offer at or from the Licenced Area
Additional Activity Obligations	254	The obligation on UPF in clause 12.14(c) of the Franchise Agreement that if UPF specifies an Additional Activity which the Franchisee would like to offer from the Licenced Area, the Franchisee and UPF United Petroleum must agree in writing: (a) the Additional Activity to be provided from the Licenced Area; (b) any fees that the Franchisee must pay to UPF United Petroleum in relation to the grant of the right to provide the Additional Activity; and (c) any other conditions that apply to the provision of the Additional Activity (for instance, required training and hours of operation)
Administrators	22	Roderick Mackay Sutherland and Sule Arnautovic
Agtan	5(e)(i)	Agtan Pty Ltd (ACN 007 410 077)
Allocated Pie Face Stock	77	Pie Face stock which representatives of UPF and/or UP ordered to be sent to Franchisees and Commission Agents respectively operating Pie Face Sites, without request by the Franchisees and Commission Agents
Allocated Retail Stock	90	Retail stock which UPF and UP respectively ordered to be sent to Franchisees and Commission Agents to be sold without request by Franchisees or Commission Agents
CCA	5(c)	Competition and Consumer Act 2010 (Cth)
Clause 10(2) Statements	118	Signed statements that UPF and UP respectively were required to have received from prospective franchisees before the Implied Franchise Agreements were entered into, pursuant to clause 10(2) of the Franchising Code

Term	Paragraph number	Definition
Closing Day Sheets	66KK	At the conclusion of each day, Franchisees and Commission Agents took sales reports generated by SwiftPOS for fuel sales, and inputted the data into a 'Closing Day Sheet' which showed the amount of sales generated, less the franchise fee or licence fee, and less fuel commission
Commission Agency Agreement	9(c)	United Network standard form commission agency agreement
Commission Agency Agreement Breach	256A	In the premises UP: (a) requiring Commission Agents to sell Pie Face products as part of the Pie Face Franchise; and (b) requiring Commission Agents to acquire the Allocated Pie Face Stock
	264	In the premises UP requiring Commission Agents to acquire and sell the Allocated Retail Stock and Allocated Pie Face Stock constituted a breach of UP's Duty of Cooperation
	265	In the premises UP requiring Commission Agents to acquire and sell the Allocated Retail Stock and Allocated Pie Face Stock constituted a breach of UP's Duty of Good Faith
Commission Agent	9(c)	A person who, at any time during the Commission Agent Relevant Period, was or commenced to be a commission agent in the United Network pursuant to a Commission Agency Agreement with UP
Commission Agent Relevant Period	9(c)	23 September 2018 to 23 September 2024
Cranbourne South Site	56	Fuel reselling business at 1-3 Cameron Street, Cranbourne Victoria 3977 trading as United Petroleum Cranbourne South
December 2016 Report	47	Report as to affairs for Original Pie Face for the period up to 31 October 2016 lodged by Christopher John Palmer on or about 22 December 2016
Delivery Aggregators Meeting	88J	Leadership Team Meeting In mid to late 2018, the precise date being unknown to the Plaintiffs, at which Avi Silver was present, at which the introduction of UberEats and MenuLog was discussed
Delivery Aggregators Pricing Matrix	88K	A "Pricing Matrix "tabled at the Delivery Aggregators Meeting that displayed cost pricing and sale pricing for each item be delivered through UberEats and MenuLog, including Pie Face products, as well as: (a) profit margin to be made between cost and sale pricing for the United Group; and (b) profit margin to be made between cost and sale pricing for a Franchisee or Commission Agent

Term	Paragraph number	Definition
Disclosure Document	13	Prior to or at the time of a Franchisee entering into a Franchise Agreement, some prospective franchisees and guarantors were provided with a copy of a document titled United Petroleum Franchise Pty Ltd Disclosure Document
DOCA	27	Deed of Company Arrangement executed by Original Pie Face appointing the Administrators to Original Pie Face entered into on or about 30 December 2014
Duty of Cooperation	257	An implied term of the Franchise Agreement and the Commission Agency Agreement that UPF and UP owed the Franchisee and Commission Agent respectively a duty of cooperation to achieve the objects of the Franchise Agreement and the Commission Agency Agreement
Duty of Good Faith	260	An implied term of the Franchise Agreement and Commission Agency Agreement that UPF and UP owed the Franchisee and Commission Agent respectively a duty to act reasonably and in good faith towards the Franchisee and Commission Agent
FNH	1	First Plaintiff, FNH United Pty Ltd (ACN 639 802 798)
FNH Franchise Agreement	53	Franchise Agreement between FNH and UPF entered into on or about 17 April 2020
FNH Ongoing Costs	58	The following fees incurred and paid by FNH to UPF throughout the duration of the FNH Franchise Agreement: (a) the Franchise Service Fee; (b) the Equipment Support Fee; (c) the Software Support Fee; and (d) the Insurance Fee
FNH Takeover Costs	55	\$300,000 in goodwill and \$74,902.95 for store stock paid by FNH to the previous franchisee, being K P Groups Pty Ltd
FNH Upfront Costs	54	FNH paid the following amounts on the following dates to UPF United Petroleum in consideration for entering into the FNH Franchise Agreement: (a) \$159,500 as an initial Franchise Fee, including GST; (b) \$6,600 as a training fee, including GST; and (c) \$50,000 as a bank guarantee with the Commonwealth Bank of Australia in favour of UPF on or about 15 April 2020;
Franchise Agreement	9(a)	United Network standard form franchise agreement
Franchise Agreement Breach	251	In the premises UPF: (a) requiring Franchisees to sell Pie Face products as part of the Pie Face Franchise; and (b) requiring Franchisees to acquire the Allocated Pie Face Stock

Term	Paragraph number	Definition
	256	In the premises by requiring Franchisees to purchase and sell Pie Face products, including the Allocated Pie Face Stock, UPF failed to comply with and breached the Additional Activity Obligations
	264	In the premises UPF requiring Franchisees to acquire and sell the Allocated Retail Stock and Allocated Pie Face Stock constituted a breach of UPF's Duty of Cooperation
	265	In the premises UPF requiring Franchisees to acquire and sell the Allocated Retail Stock and Allocated Pie Face Stock constituted a breach of UPF's Duty of Good Faith
Franchise Disclosure Document	109	A document required to be created in compliance with clause 8 of Division 2 of the Franchising Code
Franchise Fee Revenue Stream	270L	By reason of clause 17.8 of the Franchise Agreement (as pleaded at paragraphs 58A and 58B), the greater the amount of Allocated Retail Stock and Allocated Pie Face Stock sold by Franchisees, the greater the Franchise Service Fee that was charged by UPF
Franchisee	9(b)	A person who, at any time during the Franchisee Relevant Period, was or commenced to be a franchisee in the United Network pursuant to a Franchise Agreement with UPF
Franchisee Ongoing Costs	66(c)	Fees paid by Franchisees to UPF
Franchisee Relevant Period	9(a)	19 October 2016 to 20 October 2022
Franchisee Takeover Costs	66(b)	Amounts paid by Franchisees to previous Franchisees for goodwill and store stock when taking over their franchises in the United Network
Franchisee Upfront Costs	66(a)	Upfront costs paid by Franchisees to UPF as consideration for entering into their Franchisee Agreements
Franchising Code	103	Competition and Consumer (Industry Codes—Franchising) Regulation 2014 (Cth)
Franchising Code Breach	114	Contravention of section 51ACB of the CCA by UPF and UP in failing to provide Franchisees and Commission Agents respectively operating Pe Face Sites with a copy of the Franchising Code and the Franchise Disclosure Document for the Implied Franchise Agreement, in the form in which it is to be executed, in breach of the Franchising Code
	117	Contravention of 51ACB of the CCA of the CCA by UPF and UP by entering into the Implied Franchise Agreements with Franchises and Commission Agents who operate or were to operate a Pie Face Site without having received a written statement that those Franchisees and Commission Agents had received, read, and had a reasonable opportunity to understand the Franchise Disclosure Document and the Franchising Code, in breach of the Franchising Code

Term	Paragraph number	Definition
	120	Contravention of 51ACB of the CCA of the CCA by UPF and UP by entering into Implied Franchise Agreements with Franchises and Commission Agents without being provided with Clause 10(2) Statements by those Franchisees and Commission Agents, in breach of the Franchising Code
	123	Contravention of 51ACB of the CCA of the CCA by UPF and UP 122123 by entering into Implied Franchise Agreements with Franchisees and Commission Agents without providing those Franchisees and Commission Agents with the information statement set out in Annexure 2 of the Franchising Code
Franchising Code Breaches	123A	The Franchising Code Breaches pleaded in paragraphs 114, 117, 120 and 123
Future Pie Face Market Demand Representation	181	By installing the Pie Face Franchise into sites in the United Network, or consenting to such installation, UPF and/or UP represented to Franchisees and Commission Agents, and Guarantors of those Franchisees and Commission Agents, that there would be strong market demand for Pie Face products on and from the time that the Pie Face Franchise was installed throughout the United Network
Future Pie Face Profitable Franchise Representation	168	By consenting to the installation of the Pie Face Franchise into sites in the United Network the representation by: <ul style="list-style-type: none"> (a) UPF to Franchisees and Guarantors of those Franchisees; and (b) UP to Commission Agents, and Guarantors of those Commission Agents, that the Pie Face Franchise could be a profitable franchise
Group Members	10	Franchisees, Commission Agents and the Guarantors of those Franchisees and Commission Agents
Guarantor of a Commission Agent	9(d)	A person who, at any time during the Commission Agent Relevant Period, was or commenced to be a guarantor of a Commission Agent's obligations under a Commission Agency Agreement with UP
Guarantor of a Franchisee	9(b)	A person who, at any time during the Franchisee Relevant Period, was or commenced to be a guarantor of a Franchisee's obligations under a Franchise Agreement with UPF
Heathcote Site	65D	The premises located at 55-57 High Street, Heathcote VIC 3523
Implied Franchise Agreement	102	By reason of UPF and UP undertaking the installation of the Pie Face Franchise into Pie Face Sites, there was an implied agreement between UPF and UP on the one part and Franchisees and Commission Agents respectively on the other part whereby UPF and UP granted to Franchisees and Commission Agents respectively the right to use the Pie Face Intellectual Property to sell Pie Face stock at Pie Face Sites

Term	Paragraph number	Definition
JJ Franchise Agreement	59	Franchise Agreement entered into by Mr Patel and Mr Bhatti with UPF on or about 29 May 2018 in their capacities as trustees of the JJ Unit Trust
JJ Ongoing Costs	63	The following fees incurred and paid by the JJ Trustees to UPF throughout the duration of the JJ Franchise Agreement: (a) the Franchise Service Fee; (b) the Equipment Support Fee; (c) the Software Support Fee; and (d) the Insurance Fee
JJ Takeover Costs	62	Amounts paid by the JJ Trustees to the former franchisee to take over the Wallan Site, being Alpha N Omega Family Trust ABN 61 344 360 081
JJ Trustees	59	Mr Patel and Mr Bhatti in their capacities as trustees of the JJ Unit Trust
JJ Upfront Costs	61	The JJ Trustees paid the following amounts to UPF in consideration for entering into the JJ Franchise Agreement: (a) \$159,500 as an initial Franchise Fee, including GST; (b) \$6,600 as a training fee, including GST; and (c) on or about 23 May 2018, \$50,000 as a bank guarantee with the Commonwealth Bank of Australia in favour of UPF
June 2020 Istanikzai Letter	88A	Letter from Fahim Istanikzai to David Szymczak attached to an email from Fahim Istanikzai dated 27 June 2020
Leadership Team Meetings	521	Meetings between members of the United Petroleum Executive and with Avi Silver throughout the Franchisee Relevant Period and Commission Agent Relevant Period which were at times scheduled and at times impromptu
Licence Fee Revenue Stream	270R	By reason of the licence fees charged to Commission Agents by UP, the greater the amount of Allocated Retail Stock and Allocated Pie Face Stock sold by Commission Agents, the greater the licence fees that were charged by UP
Long Form Oilcode Disclosure Document	132	Annexure 1 to the Oilcode 2006 or the Oilcode 2007

Term	Paragraph number	Definition
Long Form Oilcode Disclosure Omission	146 - 151	<p>The omission from the Long Form Oil Code Disclosure Document required to be maintained by UPF and UP of details of the following in contravention of clause 15(1) of Schedule 1 of the Oilcode 2006, and clause 15(1) of Schedule 1 of the Oilcode 2017:</p> <ul style="list-style-type: none"> - Pie Face Intellectual Property (paragraph 146); - any requirement for a Franchisee or Commission Agent to maintain or acquire the Allocated Retail Stock or the Allocated Pie Face Stock (paragraph 147); - details of ownership by UPF or UP or an associate of UPF or UP, such as Eddie Hirsch and Avi Silver, of an interest in Pie Face Pty Ltd and Pie Face Bakery, being a supplier of products from which a Franchisee or Commission Agent may be required to acquire goods or services, such as the Allocated Pie Face Stock (paragraph 148); - details of the obligation of a Franchisee or Commission Agent to maintain a level of inventory or acquire an amount of goods or services, such as the Allocated Retail Stock and the Allocated Pie Face Stock (paragraph 149); - details of whether UPF or UP may change the range of goods or services supplied to Franchisees or Commission Agents respectively, which UPF and UP did by means of the Allocated Retail Stock and the Allocated Pie Face Stock (paragraph 150); - a summary of the conditions of the fuel re-selling agreement that deal with obligations of a Franchisee or Commission Agent (or references to the relevant conditions of the fuel re-selling agreement) (paragraph 151);
	152	<p>The failure of UPF and UP respectively, in contravention of clause 13(2) of Schedule 1 to the Oilcode 2006, and in contravention of clause 13(2) of Schedule 1 to the Oilcode 2017, to prepare an updated Long Form Oilcode Disclosure Document in relation to Franchise Agreements and Commission Agency Agreements that were in force at the end of a financial year</p>
Margin Revenue Stream	270E	<p>The Allocated Retail Stock and Allocated Pie Face Stock was purchased directly from wholesalers by UPF and UP with UPF and UP adding a margin on the wholesale price of the stock ordered without having regard to the legitimate interests of Franchisees and Commission Agents respectively</p>
Mr Bhatti	4	Fourth Plaintiff, Jaydeep Bhatti
Mr Istanikzai	2	Second Plaintiff, Fahim Istanikzai
Mr Patel	3	Third Plaintiff, Jigar Patel

Term	Paragraph number	Definition
Oilcode 2006	124	Competition and Consumer (Industry Codes—Oilcode) Regulation 2006 (Cth) (as in force prior to 1 April 2017)
Oilcode 2017	124	Competition and Consumer (Industry Codes—Oil) Regulations 2017 (Cth) (as in force from 1 April 2017)
Oilcode Disclosure Document	128	A document that complies with Subdivision A of the Oilcode 2006 (being a Disclosure Document within the meaning of the Oilcode 2006) or the Oilcode 2017 (being a Disclosure Document within the meaning of the Oilcode 2017)
Operations Manual	14	At all material times throughout the Franchisee Relevant Period, UPF maintained a document titled Franchise Operations Manual
Original Pie Face	15	A.C.N. 087 384 736 Pty Ltd, known as “Pie Face Pty Ltd” incorporated on or about 3 May 1999
Original Pie Face Market Demand Representation	175	<p>By consenting to the installation of the Pie Face Franchise into sites in the United Network the representation by:</p> <p>(a) UPF to Franchisees and Guarantors of those Franchisees; and</p> <p>(b) UP to Commission Agents, and Guarantors of those Commission Agents,</p> <p>that there was strong market demand for Pie Face products at the time that the Pie Face Franchise was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by a member of the United Group</p>
Original Pie Face Profitable Franchise Representation	162	<p>By consenting to the installation of the Pie Face Franchise into sites in the United Network the representation by:</p> <p>(a) UPF to Franchisees and Guarantors of those Franchisees; and</p> <p>(b) UP to Commission Agents, and Guarantors of those Commission Agents,</p> <p>that the Pie Face Franchise was a profitable franchise at the time that it was being franchised by Original Pie Face immediately prior to the acquisition of the Pie Face Franchise by the United Group</p>
Pie Face Audits	76	Audits of Pie Face Sites conducted by UPF and UP of compliance with Pie Face Directions
Pie Face Bakery	144	Pie Face Bakery Pty Ltd
Pie Face Course Costs	70	The costs associated with a food safety supervisor course that UPF and UP respectively required Franchisees and Commission Agents who operated Pie Face Sites to undertake and pay for

Term	Paragraph number	Definition
Pie Face Franchise	17	A network of retail franchises operated by Original Pie Face that predominantly retailed pies and other bakery products under the Pie Face Intellectual Property
Pie Face Group	23	Original Pie Face, Pie Face Holdings, and Pie Face Franchising Pty Ltd
Pie Face Holdings	16	A.C.N 111 409 860 Limited
Pie Face Increased Profit Representation	188	<p>By consenting to the installation of the Pie Face Franchise into sites in the United Network the representation by:</p> <p>(a) UPF to Franchisees and Guarantors of those Franchisees; and</p> <p>(b) UP to Commission Agents, and Guarantors of those Commission Agents,</p> <p>that the cost to a Franchisee or Commission Agent of retailing Pie Face products in the ordinary course of business could be exceeded by the revenue to be derived from retailing Pie Face products in the ordinary course of business, and so result in increased profit for Franchisees or Commission Agents</p>
Pie Face Intellectual Property	17	“Pie Face” brand and trademarks
Pie Face Overheads	74	The operating costs incurred by Franchisees and Commission Agents who operated Pie Face Sites which were not incurred by Franchisees and Commission Agents who did not operate Pie Face Sites including the Pie Face Utility Costs, The Pie Face Uniform Costs, the costs of employing Pie Face Team Members and the Pie Face Course Costs
Pie Face Rollout Schedule	52G	Document within the United Group which listed the scheduled rollout of the Pie Face Franchise into the United Network titled “Proposed Schedule for Pie Face Roll Out”, or words to similar effect
Pie Face Site	50	Each site throughout the United Network run by Franchisees and Commission Agents at which UPF and/or UP installed the Pie Face Franchise, including the branding, logos, and trade marks forming part of the Pie Face Intellectual Property, and installing freezers, ovens, and stock cabinets designed for Pie Face stock
Pie Face Site Directions	75	Directions given by UPF and UP to Franchisees and Commission Agents respectively operating Pie Face Sites on how to display, retail, and sell Pie Face stock, including by way of a planogram
Pie Face Suppliers	69	Suppliers of Pie Face Stock with whom UPF and UP respectively required Franchisees and Commission Agents who operated Pie Face Sites to establish accounts

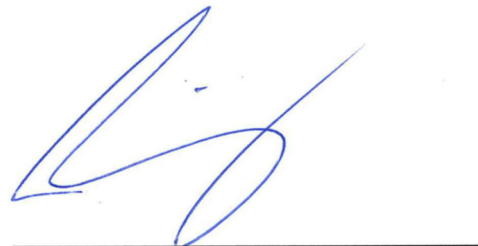
Term	Paragraph number	Definition
Pie Face Team Members	68	Staff employed by Franchisees and Commission Agents who operated Pie Face Sites to handle and retail Pie Face Stock, as required by UPF and UP respectively
Pie Face Uniform Costs	71	The costs associated with the purchase by Franchisees and Commission Agents who operated Pie Face Sites of uniforms, consisting of a Pie Face jacket, Pie face cap and chef's hat, as required by UPF and UP respectively
Pie Face Utility Costs	67	During the Franchisee Relevant Period and Commission Agent Relevant Period, the utility bills to operate a Pie Face Site in the United Network were higher than the utility costs were previously in those sites, due to the energy consumption requirements of the ovens, freezers, and stock cabinets required to be used for Pie Face stock
Pie Face Wastage	83	Pie Face stock including Allocated Pie Face Stock that was not sold by the expiry date by Franchisees and Commission Agents who operated Pie Face Sites which was disposed of and recorded as 'wastage' by those Franchises and Commission Agents
Post Acquisition Commission Agents and Guarantors	230C	Commission Agents and their associated Guarantors who entered into a Commission Agency Agreement for a site that is a Pie Face Site after the Acquisition Date
Post Acquisition Franchisees and Guarantors	229	Franchisees and their associated Guarantors who entered into a Franchise Agreement for a site that is a Pie Face Site after the Acquisition Date
Pre-Acquisition Commission Agents and Guarantors	230K	Commission Agents and their associated Guarantors who entered into a Commission Agency Agreement before the Acquisition Date
Pre-Acquisition Franchisees and Guarantors	230G	Franchisees and their associated Guarantors who entered into a Franchise Agreement before the Acquisition Date
Pribay	5(e)(ii)	Pribay Pty Ltd (ACN 007 410 040)
Rebate Revenue Stream	270	The quantum of the rebates approved by Avi Silver on the prices of Allocated Retail Stock and Allocated Pie Face Stock were set at a level so as to maximise the rebates that could be obtained by UPF and UP without having regard to the legitimate interests of the Franchisees or Commission Agents
Receivers	21	Steven John Sherman and Peter James Gothard
Retail Stock Wastage	96	Retail stock including Allocated Retail Stock that was not sold by the expiry date by Franchisees and Commission Agents which was disposed of and recorded as 'wastage'
Retail Suppliers	89	Approved suppliers of general retail stock to be sold as part of the retail offering of the site with whom UPF and UP respectively required Franchisees and Commission Agents to establish relationships with

Term	Paragraph number	Definition
SCA	9	Supreme Court Act 1986 (Vic)
Shared Drive	66L	The internal computer drive operated by the United Group which stored internal management and operational documents of the United Group
Short Form Oilcode Disclosure Document	139	Annexure 2 to the Oilcode 2006 or the Oilcode 2007
Short Form Oilcode Disclosure Omission	156-158	<p>The omission from the Short Form Oil Code Disclosure Document required to be maintained by UPF and UP of details of the following in contravention of clause 15(2) of Schedule 1 of the Oilcode 2006, and clause 15(2) of Schedule 1 of the Oilcode 2017:</p> <ul style="list-style-type: none"> - Pie Face Intellectual Property (paragraph 156); - a summary of the conditions of the fuel re-selling agreement that dealt with obligations of a Franchisee or Commission Agent respectively (or references to the relevant conditions of the fuel re-selling agreement) (paragraph 157); <p>The failure of UPF and UP respectively, in contravention of clause 13(2) of Schedule 1 to the Oilcode 2006, and in contravention of clause 13(2) of Schedule 1 to the Oilcode 2017, to prepare an updated Short Form Oilcode Disclosure Document in relation to Franchise Agreements and Commission Agency Agreements that were in force at the end of a financial year (paragraph 158)</p>
State Manager Meetings	52L	Meetings between the United Group General Manager – Retail with State Managers by phone throughout the Franchisee Relevant Period and Commission Agent Relevant Period
Surveillance Team	76B(b)	The team within the United Group head office which monitored cameras installed at Pie Face Sites
The SwiftPOS System	66E	The internal software system operated by the United Group
Unauthorised Fines	284	Fines issued to Franchisees and Commission Agents respectively by UPF and UP who were identified as failing to comply with directions from UPF and UP, or for having sold stock purchased from suppliers other than Retail Suppliers
United Group	7	A group of companies trading under the United Petroleum brand and trademarks of which UP and UPF are part
United Lawyers	66Q	The in-house legal team of the United Group
United Network	8	Within the United Group, UPF is an operating entity that operates service stations via a network of licensed businesses operated by franchisees while UP is the contracting party for Commission Agents

Term	Paragraph number	Definition
United Petroleum Executive	52C	Executive-level management of the United Group, which included the Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer and other members of the executive-level management of the United Group
UP	6A	Third Defendant, United Petroleum Pty Ltd (ACN 085 779 255)
UP No Minimum Inventory Representation	200A	By reason of UP's conduct in providing Commission Agents and their Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and Guarantors that there would not be any obligation on a Commission Agent to maintain any minimum amount of inventory required to operate a site in the United Network
UP No Purchase Obligation Representation	205A	By reason of UP's conduct in providing Commission Agents and their Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and Guarantors that there would not be any obligation on a Commission Agent to acquire goods or services as directed by UP
UP No Range Change Representation	216A	By reason of UP's conduct in providing Commission Agents and Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and their Guarantors that it would not require them to provide goods or services that did not form part of the range of goods or services described by that document
UP Post Acquisition Contravening Representations	228C	Together, (a) the Original Pie Face Profitable Franchise Representation; (b) the Future Pie Face Profitable Franchise Representation; (c) the Original Pie Face Market Demand Representation; (d) the Future Pie Face Market Demand Representation; (e) the Pie Face Increased Profit Representation; (f) the UP No Minimum Inventory Representation; (g) the UP No Purchase Obligation Representation; and (h) the UP Stock Control Representation
UP Pre-Acquisition Contravening Representations	230K	Together, (a) the UP No Minimum Inventory Representation; (b) the UP No Purchase Obligation Representation; (c) the UP No Range Change Representation; and (d) the UP Stock Control Representation
UP Stock Control Representation	224I	By reason of UP's conduct in providing Commission Agents and their Guarantors with the Commission Agency Agreement, UP represented to Commission Agents and Guarantors that they would have the ability to control their own stock levels for the purpose of their business, and would not be forced to pay for stock they did not order or need

Term	Paragraph number	Definition
UPF	5	First Defendant, United Petroleum Franchise Pty Ltd (ACN 127 764 989)
UPF No Minimum Inventory Representation	195	By reason of UPF's conduct in providing Franchisees and their Guarantors with the Franchise Agreement UPF represented to Franchisees and their Guarantors that there would not be any obligation on a Franchisee to maintain any minimum amount of inventory required to operate a site in the United Network
UPF No Purchase Obligation Representation	201	By reason of UPF's conduct in providing Franchisees and their Guarantors with the Franchise Agreement, UPF represented to Franchisees and Guarantors that there would not be any obligation on a Franchisee to acquire goods or services as directed by UPF
UPF No Range Change Representation	212	By reason of UPF's conduct in providing Franchisees and their Guarantors with the Franchise Agreement UPF represented to Franchisees and Guarantors that it would not require them to provide goods or services that did not form part of the range of goods or services described by that document
UPF Post Acquisition Contravening Representations	225	Together, (a) the Original Pie Face Profitable Franchise Representation; (b) the Future Pie Face Profitable Franchise Representation; (c) the Original Pie Face Market Demand Representation; (d) the Future Pie Face Market Demand Representation; (e) the Pie Face Increased Profit Representation; (f) the UPF No Minimum Inventory Representation; (g) the UPF No Purchase Obligation Representation; (i) the UPF No Range Change Representation; and (k) the UPF Stock Control Representation
UPF Pre-Acquisition Contravening Representations	227	Together, (a) the UPF No Minimum Inventory Representation; (b) the UPF No Purchase Obligation Representation; (c) the UPF No Range Change Representation; and (e) the UPF Stock Control Representation
UPF Stock Control Representation	224A	By reason of UPF's conduct in providing Franchisees and their Guarantors with the Franchise Agreement, UPF represented to Franchisees and Guarantors that they would have the ability to control their own stock levels for the purpose of their business, and would not be forced to pay for stock they did not order or need
Upfront Stock Costs	66AA	When entering into a Commission Agency Agreement in the United Network, Commission Agents would pay upfront for stock.
Wallan Site	60	Fuel reselling business at Lots 11-14 High Street, Wallan, Victoria 3756, trading as United Wallan

Term	Paragraph number	Definition
Wastage Reports	66J	By reason of the SwiftPOS system, at all material times UPF and Avi Silver had access to data showing what stock was not being sold by a Franchisee and was disposed of and recorded as 'Wastage', including the total amount being recorded as 'Wastage' on any particular day, week, or month
Westgate Commission Agent	88F	A Commission Agent for the Westgate site who was present at the 2018 Westgate Commission Agent Meeting
Yug Sharma	4A	Fifth Plaintiff, Yug Sharma Pty Ltd (ACN 640 132 190)
Yug Sharma Agreement	65B	The Commission Agency Agreement between Yug Sharma and UP entered on or about 14 April 2020 and which ended on or about April 2021 and the further Commission Agency Agreement between Yug Sharma and UP entered on or about April 2021.
Yug Sharma Ongoing Costs	65I	Costs paid by Yug Sharma to UP of approximately: (a) \$303.20 per day as a licence fee; (b) \$55.50 in insurance, repairs, and maintenance; and (c) \$22.57 per day for cash transit security
Yug Sharma Upfront Costs	65F	Yug Sharama paid approximately \$67,000 for the store stock at the Heathcote site at the time of entry into the Yug Sharma Agreement



**Stewart Alan Levitt, Principal and Managing Partner
Levitt Robinson Solicitors**

Dated: 23 September 2024

Settled by Brendan May of Counsel

1. Place of trial—
(If no place of trial is specified, trial will be in Melbourne.)
2. Mode of trial— *Judge of the Court sitting alone.*

3. ~~This writ was filed for the Plaintiffs by T.F. Grundy Lawyers of Level 1, 530 Little Collins Street, Melbourne Victoria 3000, as agent for Levitt Robinson Solicitors of Ground Floor, 162 Goulburn Street, Sydney NSW 2010.~~
4. The address of the First Plaintiff is—
9 Charmouth Place
Narre Warren, VIC 3805
5. The address of the Second Plaintiff is—
9 Charmouth Place
Narre Warren, VIC 3805
6. The address of the Third Plaintiff is—
5 Coe Street
Mernda VIC 3754
7. The address of the Fourth Plaintiff is—
1 Gallagher Way
Mernda VIC 3754
6. The address for service of the plaintiff is—
~~The Victorian town agents for Levitt Robinson Solicitors
T.F. Grundy Lawyers
Level 1, 530 Little Collins Street
MELBOURNE VIC 3000~~

c/- Levitt Robinson Solicitors
Ground Floor, 162 Goulburn Street
Surry Hills NSW 2010
7. The email address for service of the Plaintiffs is—
slevitt@levittrobinson.com; sdoherty@levittrobinson.com; moraha@levittrobinson.com
8. The address of the First Defendant is—
~~600 Glenferrie Road
Hawthorn, VIC 3122~~

c/- King & Wood Mallesons
Level 33, One Eagle Waterfront Brisbane,
1 Eagle Street, Brisbane QLD 4000
James.Russell@au.kwm.com
9. The address of the Second Defendant is—
~~59 Hopetoun Road
Toorak, VIC 3142~~

c/- Seyfarth Shaw
Level 27, 55 Collins Street
Melbourne, Victoria 3000
HSkene@seyfarth.com

SCHEDULE OF PARTIES**BETWEEN****FNH UNITED PTY LTD (ACN 639 802 798)**

First Plaintiff

FAHIM ISTANIKZAI

Second Plaintiff

JIGARKUMAR BHARATBHAI PATEL

Third Plaintiff

JAYDEEP DEVJIBHAI BHATTI

Fourth Plaintiff

YUG SHARMA PTY LTD (ACN 640 132 190)Fifth Plaintiff

-and-

**UNITED PETROLEUM FRANCHISE PTY LTD
(ACN 127 764 989)**

First Defendant

AVI SILVER

Second Defendant

UNITED PETROLEUM PTY LTDThird Defendant