

## NOTICE OF FILING

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PTY LTD (ACN 004 189 708)  
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*Sia Lagos*

Registrar

### Important Information

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## Reply

No. VID1247 of 2024

Federal Court of Australia  
District Registry: Victoria  
Division: General

### **Benjamin Glenn DEMERY**

Applicant

**COLES SUPERMARKETS AUSTRALIA PTY LTD** (ACN 004 189 708)

Respondent

### **A. INTRODUCTION AND OVERVIEW**

1. In response to paragraph 1 (and its several subparagraphs) of the Defence filed 04 April 2025 (**Defence**), the Applicant:
  - a) repeats his pleadings in respect of paragraphs 3A to 3G below; and
  - b) repeats his pleadings in respect of paragraph 1 of the Statement of Claim filed 14 November 2024 (**SoC**).
2. In response to paragraph 2 of the Defence, the Applicant repeats his pleadings in respect of paragraphs 15, 16 and 20(b) below.
3. [*Not used*].

### **B. IMPORTANT FACTS GIVING RISE TO THE CLAIM**

- 3A. The Applicant does not know and therefore cannot admit the allegations in paragraph 3A of the Defence.
- 3B. In response to paragraph 3B (and its several subparagraphs) of the Defence, the Applicant:
  - a) does not know and therefore cannot admit the allegations in subparagraph 3B(a) of the Defence; and

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Filed on behalf of (name & role of party) Benjamin Glenn Demery, Applicant  
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- b) does not know and therefore cannot admit the allegations in subparagraph 3B(b) of the Defence; and
- c) admits the allegations in subparagraph 3B(c) of the Defence; and
- d) does not know and therefore cannot admit the allegations in subparagraph 3B(d) of the Defence; and
- e) does not know and therefore cannot admit the allegations in subparagraph 3B(e) of the Defence.

3C. In response to paragraph 3C (and its several subparagraphs) of the Defence, the Applicant:

- a) admits the allegation in subparagraph 3C(a) of the Defence; and
- b) admits the allegations in subparagraph 3C(b) of the Defence; and
- c) does not know and therefore cannot admit the allegations in subparagraph 3C(c) of the Defence; and
- d) admits the allegations in subparagraph 3C(d) of the Defence.

3D. In response to paragraph 3D (and its several subparagraphs) of the Defence, the Applicant:

- a) admits the allegation in subparagraph 3D(a) of the Defence; and
- b) does not know and therefore cannot admit the allegations in subparagraph 3D(b) of the Defence; and
- c) does not know and therefore cannot admit the allegations in subparagraph 3D(c) of the Defence.

3E. In response to paragraph 3E (and its several subparagraphs) of the Defence, the Applicant:

- a) does not know and therefore cannot admit the allegations in subparagraph 3E(a) of the Defence; and
- b) does not know and therefore cannot admit the allegations in subparagraph 3E(b) of the Defence.

3F. In response to paragraph 3F (and its several subparagraphs) of the Defence, the Applicant:

- a) does not know and therefore cannot admit the allegations in subparagraph 3F(a) of the Defence; and

- b) does not know and therefore cannot admit the allegations in subparagraph 3F(b) of the Defence; and
- c) denies the characterisation of “the promotional and non-promotional pricing”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3F(c) of the Defence; and
- d) denies the characterisation of “the new non-promotional price”, does not know and therefore cannot admit the allegations in subparagraph 3F(d) of the Defence; and
- e) denies that “the sale of Relevant Products at their non-promotional price was a sale at a genuine, undiscounted price”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3F(e) of the Defence; and
- f) denies the characterisation of “the non-promotional price”, denies the characterisation of “a new promotional price”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3F(f) of the Defence; and
- g) denies the allegations in subparagraph 3F(g) of the Defence.

3G. In response to paragraph 3G (and its several subparagraphs) of the Defence, the Applicant:

- a) does not know and therefore cannot admit the allegations in subparagraph 3G(a) of the Defence; and
- b) denies the characterisation of “promotional and non-promotional pricing”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3G(b) of the Defence; and
- c) denies the characterisation of “genuine undiscounted price”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3G(c) of the Defence; and
- d) denies the characterisation of “non-promotional price”, denies the characterisation of “genuine, undiscounted price”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3G(d) of the Defence; and
- e) denies the characterisation of “non-promotional price” and “promotional price”, and otherwise does not know and therefore cannot admit the allegations in subparagraph 3G(e) of the Defence; and
- f) denies the allegations in subparagraph 3G(f) of the Defence.

4. In response to paragraph 4 (and its several subparagraphs) of the Defence, the Applicant:

- a) admits the allegations in subparagraph 4(a) of the Defence; and
- b) [*Not used*].

#### **B.1 The 'Down Down' Programme**

5. As to paragraph 5 (and its several subparagraphs) of the Defence, the Applicant:

- a) does not know and therefore cannot admit the allegation in subparagraph 5(a) of the Defence; and
- b) admits the allegation in subparagraph 5(b) of the Defence; and
- c) admits the allegation in subparagraph 5(c) of the Defence; and
- d) [*Not used*].

6. As to paragraph 6 (and its several subparagraphs) of the Defence, the Applicant:

- a) repeats his pleadings in respect of paragraph 5 above; and
- b) [*Not used*].

7. In response to paragraph 7 (and its several subparagraphs) of the Defence, the Applicant:

- a) repeats his pleadings in respect of paragraphs 3B and 3C above; and
- b) [*Not used*].

8. In response to paragraph 8 (and its several subparagraphs) of the Defence, the Applicant:

- a) repeats his pleadings in respect of paragraphs 3A to 3G above; and
- b) [*Not used*].

9. In response to paragraph 9 (and its several subparagraphs) of the Defence, the Applicant:

- a) repeats his pleadings in respect of paragraphs 3B and 3C above; and
- b) [*Not used*].

10. In response to paragraph 10 (and its several subparagraphs) of the Defence, the Applicant:

- a) repeats his pleadings in respect of paragraphs 3A to 3G above; and
- b) [*Not used*].

11. [Not used].
12. [Not used].
13. In response to paragraph 13 (and its several subparagraphs) of the Defence, the Applicant:
- a) [Not used]; and
  - b) repeats his pleadings in respect of paragraph 14 below; and
  - c) [Not used].

## **B.2 The ‘Down Down’ Representation**

14. [Not used].
15. In response to paragraph 15 (and its several subparagraphs) of the Defence, the Applicant:
- a) [Not used]; and
  - b) repeats his pleadings in respect of subparagraphs 3F(d) to 3F(g) and 3G(c) to 3G(e) above; and
  - c) denies the characterisation of “non-promotional price”, repeats his pleadings in respect of paragraphs 15 to 17 of the SoC, and otherwise denies the allegations in subparagraph 15(c) of the Defence; and
  - d) [Not used].

## **B.3 Misleading representations in relation to the Affected Products**

16. In response to paragraph 16 (and its several subparagraphs) of the Defence, the Applicant:
- a) repeats his pleadings in respect of paragraphs subparagraph 1(b) and paragraphs 3A to 3G above; and
  - b) —
    - i. —
      - A. admits that the Previous Long-Term Regular Price, which the Defence describes as Price 1, was referred to in the SoC, and otherwise denies the allegations in subparagraph 16(b)(i)(A) of the Defence; and
      - B. admits that the Spike Price, which the Defence describes as Price 2, was referred to in the SoC, repeats his pleadings in respect of

subparagraphs 3F(d) and 3G(c) above, and otherwise denies the allegations in subparagraph 16(b)(i)(B) of the Defence; and

C. admits that the 'Down Down' Price, which the Defence describes as Price 3, was referred to in the SoC, repeats his pleadings in respect of subparagraphs 3F(f) and 3G(e) above, and otherwise denies the allegations in subparagraph 16(b)(i)(C) of the Defence; and

ii. denies the allegations in subparagraph 16(b)(ii) of the Defence; and

iii. denies the allegations in subparagraph 16(b)(iii) of the Defence; and

c) [*Not used*].

17. In response to paragraph 17 (and its several subparagraphs) of the Defence, the Applicant:

a) repeats his pleadings in respect of subparagraphs 3F(d) to 3F(g) and 3G(c) to 3G(f) and 16(b) above; and

## **C. THE APPLICANT AND GROUP MEMBERS' LOSS OR DAMAGE**

### **C.1 The Applicants' purchases of one or more Affected Products**

18. In response to paragraph 18 (and its several subparagraphs) of the Defence, the Applicant:

a) [*Not used*]; and

b) repeats his pleadings in respect of paragraph 15 above; and

c) [*Not used*].

19. [*Not used*].

20. In response to paragraph 20 (and its several subparagraphs) of the Defence, the Applicant:

a) repeats his pleadings in respect of paragraphs 15 and 16 above; and

b) [*Not used*]; and

c) [*Not used*].

### **C.2 The Group Members' purchases of Affected Products**

21. [*Not used*].

22. In response to paragraph 22 of the Defence, the Applicant repeats his pleadings in respect of paragraph 15 above.

23. In response to paragraph 23 of the Defence, the Applicant repeats his pleadings in respect of paragraph 15 above.

24. In response to paragraph 24 of the Defence, the Applicant repeats his pleadings in respect of paragraphs 15 and 16 above, and repeats his pleadings in respect of paragraphs 2 and 15 to 17 of the SoC.

**C.3 The Applicant's loss or damage**

25. In response to paragraph 25 of the Defence, the Applicant repeats his pleadings in respect of paragraphs 15 and 16 above.

**C.4 Group Members' loss or damage**

26. In response to paragraph 26 of the Defence, the Applicant repeats his pleadings in respect of paragraphs 15 and 16 above.

**D. PRIMARY LEGAL GROUNDS FOR RELIEF CLAIMED**

27. In response to paragraph 27 of the Defence, the Applicant repeats his pleadings in respect of paragraphs 15 and 16 above.

28. *[Not used]*.

**E. COMMON QUESTIONS OF LAW OR FACT**

29. *[Not used]*.

**F. RELIEF CLAIMED**

30. *[Not used]*.

Date: 16 May 2025



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Signed by Gregory John Mackey  
Lawyer in the employ of David Cossalter  
Lawyer for the Applicant

This pleading was prepared by Gregory John Mackey, solicitor, and settled by Dr Peter Cashman and Dr David J. Townsend, both of counsel



**Certificate of lawyer**

I, David Cossalter, certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 16 May 2025



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Signed by Gregory John Mackey, lawyer in  
the employ of  
David Cossalter  
Lawyer for the Applicant