

NOTICE OF FILING

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COLES SUPERMARKETS AUSTRALIA PTY LTD (ACN 004 189 708)
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Sia Lagos

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Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59

Rule 29.02(1)

Affidavit

No. VID 973 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Australian Competition and Consumer Commission

Applicant

Coles Supermarkets Australia Pty Ltd (ACN 004 189 708)

Respondent

Affidavit of: Paul Francis Carroll

Address: 11 Wilson Street, South Yarra, Victoria

Occupation: Commercial Lead (e-Commerce) at Swaggle

Date: 18 November 2025

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 Filed on behalf of: Coles Supermarkets Australia Pty Ltd (ACN 004 189 708), the respondent

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I, Paul Francis Carroll of 11 Wilson Street, South Yarra, Victoria, Commercial Lead (e-Commerce) at Swaggle, say on oath:

A. INTRODUCTION

- 1 I am the Commercial Lead (e-Commerce) for Swaggle at Coles Supermarkets Australia Pty Ltd. Swaggle is an online pet specialty retailer owned by Coles Supermarkets Australia Pty Ltd (ACN 004 189 708) (**Coles**).
- 2 Shown to me at the time of swearing this affidavit and exhibited to this affidavit and marked **Exhibit PC-1 and Exhibit PC-2** are two consolidated sets of documents. In this affidavit, I refer to each document by reference to the relevant tab number in Exhibits PC-1 and Exhibit PC-2 and where convenient by the document's identification number, stamped on the top right-hand corner of the first page. Where documents in Exhibit PC-1 or Exhibit PC-2 have attachments, the host document is numbered, for example, tab 1, with each of the attachments numbered tab 1.1 and tab 1.2 accordingly.
- 3 I was previously the Senior Category Manager of Pet at Coles.

B. EMPLOYMENT HISTORY

- 4 I have been employed by Coles since October 2019. Since then, I have held the following roles:
- (a) Senior Category Manager of Personal Care from 28 October 2019 to 12 December 2021;
 - (b) Senior Category Manager of Pet from 13 December 2021 to 30 January 2023; and
 - (c) Commercial Lead (e-Commerce) for Swaggle since 30 January 2023.
- 5 I officially finished in the role of Senior Category Manager of Pet on 29 January 2023 and began my new role at Swaggle on 30 January 2023, but I was asked to perform both roles until 20 February 2023.
- 6 Prior to commencing at Coles, I held various roles at Tesco in the United Kingdom. I had worked at Tesco since September 2014. The last role I held at Tesco was a Senior Category Manager role in Baby.
- 7 Unless otherwise stated, the matters to which I refer in this affidavit concern the period when I was Senior Category Manager of Pet.

C. THE PET CATEGORY

- 8 As Senior Category Manager of Pet, I managed four product categories being Pet Food, Pet Accessories, Bird Food and Fresh Pet Food, which each sat within the Homecare business category and the broader Health & Home Business Unit. The Pet category comprised 30 sub-categories which I grouped together as follows:
- (a) **Pet Food:** Cat Treats, Dog Treats, Drinks, Dry Cat, Dry Dog, Litter, Wet Cat and Wet Dog;
 - (b) **Fresh Pet Food:** Cat, Dog and Frozen;
 - (c) **Pet Accessories:** Cat Accessories, Cat Medicinal, Cat Toys, Dog Accessories, Dog Medicinal, Dog Toys, Fish, Kitten, Petcare, Puppy and Wash & Grooming; and
 - (d) **Bird Food:** Bird Accessories, Budgie, Canary, Fish, Parrot, Small Animal Accessories, Sundry and Wild Bird.
- 9 I reported to the Business Category Manager (**BCM**) of Homecare, Chad Burke for a period and then Olga Zanetti. I had the following direct reports:

- (a) Gentjana (Gena) Ermini, Business Category Coordinator (**BCC**), who provided administrative support to the category and was responsible for executing price changes and promotional funding arrangements into Coles' system. Within Coles, this action is referred to as 'keying' price changes and promotional funding arrangements;
- (b) Emma Bates and Daniel De Vincentis, Assistant Category Managers (**ACMs**), who during their time in the role had day to day responsibility for trade planning across the category, assisting me to negotiate with suppliers and plan promotions. I gave my ACMs the opportunity to look after (under my supervision) the Fresh Pet portfolio from 'end-to-end', meaning they assumed the full range of Category Manager responsibilities for that smaller set of products. This included negotiating promotions with suppliers, conducting range reviews, and negotiating CPAs;
- (c) Indi Tait, Buying and Trading Graduate; and
- (d) Rosini Gianasmidis, Buying and Trading Graduate.

10 My main responsibilities were:

- (a) overseeing the strategic direction for buying and selling of products in the pet food category, including developing category plans and monitoring the category's financial performance against its budgets;
- (b) working with suppliers in relation to ranging, supply, forecasting, cost price alteration (**CPA**) requests, promotions, and funding support for things like promotions, off location displays and marketing assets such as catalogue spots and gondola ends;
- (c) ensuring that Coles remained competitive in the market, including by conducting floor walks in, and monitoring internal pricing indices tracking price movements at, competitor stores such as Woolworths and Aldi;
- (d) setting the retail prices (promotional and non-promotional) for products in the category;
- (e) ensuring that my team was familiar with and applied Coles' relevant policies, including the promotional guardrails, including by monitoring my team's completion of the required compliance training; and
- (f) collaborating with teams across Coles, particularly the Operations team (supply and forecasting), Marketing team, Pricing and Value team and Vendor Management Office (**VMO**).

D. PRICE SETTING AND PROMOTIONAL PLANNING

D.1 Setting prices

11 As Senior Category Manager, I was ultimately responsible for setting the retail and promotional prices for products in my product categories. In respect of pricing for the Fresh Pet category, I was assisted by my ACM.

12 I approached price setting by drawing on my experience in the grocery industry as well as the experience of suppliers in the Pet category. I considered that suppliers often had valuable insight as to where their products sat in the market (in terms of quality, innovation and value) and what retail prices would be competitive. I considered there to be high levels of competition between suppliers and that, as a result, suppliers in Pet usually had a strong incentive to, and did, set recommended retail prices (**RRPs**) and promotional recommended retail price (**PRRPs**) that were competitive in the market. Therefore, when setting the white ticket price and promotional prices for products, I usually started by considering the supplier's RRP or PRRP as a guide. Additionally, I often checked that the supplier's RRP and PRRP were competitive with the current

prices at Coles' competitors, including by checking the prices that were charged for the products at Woolworths and Aldi, using pricing reports prepared by Coles' Pricing and Value team.

- 13 In making retail pricing decisions I also aimed to ensure that any price I set delivered a 'value message' for Coles' customers. By this, I mean setting a price that conveyed to customers that the product was good value. In doing so I had regard to the historical volume of products sold, how the category performed as a whole financially, whether the price made sense when compared to the unit price of different sized versions of the same product (ie, whether the unit price for larger packs was lower than smaller packs), and the price relative to the prices of other products in the category, using Coles' 'good, better, best' framework. This framework involved offering products for sale at a variety of price points (with 'good' products being having the lowest prices and 'best' products having the highest prices). For example, in the Pet category, 'good' products were Pedigree branded products, 'better' products were Nature's Gift branded products, and 'best' products were Optimum branded products.
- 14 When setting promotional prices and in addition to the factors set out above, I also considered how much promotional funding the supplier had provided to support the promotion. This was so I could consider the appropriate promotional depth (ie, the difference between the white ticket price and the promotional price) for the relevant product.

E. SUPPLIER LIST PRICES AND CPA REQUESTS

- 15 Coles had trading terms with each of its suppliers for the Pet categories. Among other things, these terms specified that Coles agreed to pay a 'list price' for the suppliers' products, which refers to the wholesale price of the product, before any discounts, deductions or rebates agreed between Coles and the supplier.
- 16 When suppliers' costs increased, they could seek to increase their list price(s) by submitting a CPA request to Coles. As Senior Category Manager, I typically led CPA negotiations with suppliers in the Pet category. It was my responsibility to decide whether to accept, partially accept or reject a CPA request from a supplier in the Pet category, in accordance with Coles' CPA policy.
- 17 In the period 2021 to 2023, Coles received a very large volume of CPA requests in the Pet Food and Fresh Pet Food categories (compared to the volume of CPA requests it had received before then). Some suppliers approached Coles for a CPA multiple times within a year. Many of the CPA requests were complex, in that they involved a large range of products that had different combinations of ingredients and packaging which meant there was different price drivers between products.
- 18 Prior to this period there was increased demand for products driven by 'panic buying' and more Australian households buying pets during the COVID-19 lockdowns. Supply chains were impacted by this and those constraints continued into this period, affecting the amount of pet food stock within the market. To the best of my recollection, on any given week in Coles' stores, the Pet Food and Fresh Pet Food categories were only reaching 60 – 80% of required supply in terms of stock on supermarket shelves. In that context, I sought to resolve CPA requests as quickly as possible. I did not want to risk being in a scenario where a CPA request could not be agreed with a supplier, the supplier therefore ceased supplying products to Coles, and Coles had more empty shelves.
- 19 Pet was a promotion driven category, which meant that, compared to other categories, customers were more likely to purchase a product on promotion than full price.
- 20 When a supplier submitted a CPA request to Coles, it was often necessary to adjust the promotional plan for the products the subject of the request, or agree an entirely new promotional plan with the supplier for those products. This was because the assumptions underpinning the promotional plan were based on the previous list price and the previous white ticket price. For

example, the promotional funding previously agreed with the supplier would be sufficient to support a certain discount (eg, 30%) off the previous white ticket price but might not be enough to support the same discount off the higher white ticket price.

- 21 Because of this, I would usually negotiate and agree new or revised promotional plans for products at the same time that CPA requests were negotiated. This often led to more compressed timelines (e.g. two months) for agreeing promotional plans with suppliers than otherwise was typically the case (typically Coles aimed to discuss and agree promotional plans with suppliers around six months in advance to allow for supply forecasting and to ensure Coles has sufficient stock available for delivery to our stores). However, on some occasions, particularly in the circumstances I describe at paragraph 17 above when I was concerned about supply being interrupted in the Pet category, I prioritised the agreement of the CPA before negotiating any promotional strategy to minimise any supply disruptions.
- 22 The promotional planning process was usually managed by my ACM. I was kept informed of the discussions with suppliers and became involved at times, particularly when the supplier had proposed a promotional plan that the ACM considered would not enable Coles to be competitive.

F. PRICE CHANGES FOR NATURES GIFT WET DOG FOOD 1.2KG

F.1 Real Pet Food's first CPA Request

- 23 When I took over the role of Senior Category Manager, I took over several existing CPA requests which were underway. One of those CPA requests was a request from Real Pet Food, which was submitted to Coles on 15 November 2021 (**First RPF CPA**). The CPA request was later provided to me by Lauren Murtagh by email on 31 December 2021. A copy of Ms Murtagh's email (COL.501.079.0308 (at .0308)) and its attachments (COL.501.079.0309 and COL.501.079.0310) are at **tabs 1-1.2 of Exhibit PC-1**.
- 24 The request was to increase the list price for 70 products that Real Pet Food supplied to Coles. One of those products was Nature's Gift Adult All Breeds Wet Dog Food Loaf Chicken, Rice & Vegetables 1.2kg (SKU: 3589976) product (**Nature's Gift 1.2kg Chicken, Rice & Vegetables Product**). For that product, Real Pet Foods proposed to increase its list price from **\$RE** to **\$RE**, and its RRP from \$4.80 to \$5.50.
- 25 Around when I took over from the previous Senior Category Manager of Pet, Michael Papalia, he forwarded me two emails from the VMO containing their analysis of Real Pet Food's CPA request. A copy of the first email (COL.501.077.7149) and its attachment (COL.501.077.7152) is at **tabs 2-2.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetable Product appearing at Row 59 of **tab 2.1**. A copy of the second email (COL.501.077.4311) and its attachments (COL.501.077.4314 and COL.501.077.4315) are at **tabs 3-3.2 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetable Product appearing at Row 59 of **tabs 3.1 and 3.2**.
- 26 The VMO estimated the amount by which Coles' costs would increase if Coles agreed to the CPA request. The VMO did so by (for each product the subject of the request) multiplying the list price of the product by the volume of the product Coles had sold in the preceding 12 months. In this way, the VMO estimated that, if Coles agreed to the CPA request in full (for all of the 70 products the subject of the First RPF CPA), Coles' costs would increase by 14.7%. For the Nature's Gift 1.2kg Chicken, Rice & Vegetables Product, the VMO estimated that the CPA request would, if agreed, increase Coles' costs by approximately 14.6%.
- 27 The VMO also assessed whether Real Pet Food's costs had increased by the same amounts, using publicly available information and any information the supplier provided. This was referred

to as 'validating' a CPA request. The VMO validated CPA requests using two methodologies: an 'average movement' methodology and a 'point-to-point' (**P2P**) methodology.

- 28 The VMO validated an 8.5% increase in Real Pet Foods' costs using the average movement methodology and a 12.8% increase in its costs using the P2P methodology. In relation to the Nature's Gift 1.2kg Chicken, Rice & Vegetables Product specifically, the VMO validated a 2.4% cost increase using the average movement methodology and a 14.6% increase using the P2P methodology.
- 29 Between 14 December 2021 and 10 February 2022, I negotiated the First RPF CPA with Lauren Murtagh and Simon Russell at Real Pet Food. This included me informing Real Pet Food of the VMO team's initial analysis, receiving further information from Real Pet food in support of the First RPF CPA, considering Real Pet Food's proposal regarding additional funding that Real Pet Food was able to provide in order to finalise the CPA request (although these did not specifically concern the Nature's Gift 1.2kg Chicken, Rice & Vegetables Product), and working with the VMO team to prepare updated analysis incorporating additional information provided by Real Pet Food. Emails that I sent or received during this period include those at **tabs 4 to 11** (including any attachments, some of which are confidential) **and confidential tabs 12 and 13** (including any attachments) **of Exhibit PC-1**.
- 30 During this negotiation I was concerned that if Coles did not reach an agreement with Real Pet Foods in respect of the First RPF CPA by 7 February 2022 (being Real Pet Food's proposed date for the commencement of its new list prices for the First RPF CPA), Real Pet Food may have refused to continue supplying Coles at the current price, or may have attempted to charge Coles the higher price, which would have forced Coles to reject Real Pet Food's deliveries. I was concerned this would result in a 'stop supply' position (ie, where supply of products to customers is interrupted).
- 31 In the interest of ensuring that there was sufficient stock on shelves, especially given there was limited stock in the market, I ultimately accepted Real Pet Food's CPA request, even though some of the claimed costs had not been validated by the VMO. I did so by email to Simon Russell at Real Pet Food on 10 February 2022. A copy of my email is at **confidential tab 14 of Exhibit PC-1** (COL.501.080.9198 (at .9198)).
- 32 There was a short delay in when the First RPF CPA could take effect because Real Pet Food had not submitted the required information to update the inventory management system and finalise the agreed cost price. Ultimately, the First RPF CPA took effect on 14 February 2022 rather than 7 February 2022. A copy of the emails facilitating this effective date are at **confidential tabs 15-16 of Exhibit PC-1**.
- 33 When the First RPF CPA took effect, I emailed Chad Burke (BCM of Homecare) with the finalised terms of the First RPF CPA. At this time I decided on the new white ticket prices for the products the subject of the First RPF CPA and asked my BCC to increase the retail prices of these products in line with the supplier's RRP, including the Natures Gift 1.2kg Chicken Rice and Vegetables Product. A copy of my email to Mr Burke (COL.500.029.6769) and its attachment (COL.500.029.6770) are at **confidential tabs 17-17.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 27 of **confidential tab 17.1**.
- 34 I set the white ticket price for the Nature's Gift 1.2kg Chicken Rice & Vegetables Product at \$5.50 which was the supplier's RRP for the product. I considered Real Pet Food's RRP to be an appropriate price for the product for the reasons referred to in 12 above, that is, I considered there to be strong competition between the suppliers in the Pet category and that Real Pet Food knew its products well and would recommend a competitive price point.
- 35 The new white ticket price of \$5.50 took effect on 9 March 2022. I was copied on an email to Simon Russell at Real Pet Food on 14 February 20022 confirming the dates that the cost

increases and RRP changes were to take effect. A copy of this email (COL.500.029.6798) and its attachments (COL.500.029.6807, COL.500.029.6808 and COL.500.029.6809) are at **confidential tabs 18-18.1 and tabs 18.2-18.3 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetable Product appearing at Row 27 of **confidential tab 18.1** and Row 32 of **tab 18.2**.

- 36 After the First RPF CPA took effect on 14 February 2022, I continued negotiating with Real Pet Food in relation to promotional strategies for the products in the First RPF CPA. Between 9 February 2022 and 13 April 2022, Real Pet Food provided to me several proposals for different promotional strategies and I provided feedback on whether I thought these would be effective. This included Real Pet Food sharing modelling of a number of alternative promotional strategies based on a white ticket price of \$5.50, including a strategy using the Down Down promotional mechanic, and a Hi-Lo promotional strategy where the product would fluctuate between the white ticket price of \$5.50 and two different promotional prices of \$4.00 and \$3.50. Emails that I sent and received during this period include those at **confidential tabs 19-20, 22-24, and 26** (including any attachments) **and tabs 21, 25, and 27** (including any attachments, some of which are confidential) **of Exhibit PC-1**, with **tabs 20 and 27** only including attachments that refer to the Natures Gift 1.2kg Chicken Rice and Vegetables Product.
- 37 On 9 March 2022, the Nature's Gift 1.2kg Chicken, Rice & Vegetables Product moved to the white ticket price of \$5.50. On the same day, I observed that Woolworths was continuing to sell the Natures Gift 1.2kg Chicken Rice & Vegetables product at a lower price of \$4.50. This motivated me to try and negotiate a promotional plan by which Coles would sell the product at a lower price that would be more competitive with Woolworths. A copy of the email from my ACM reporting on Woolworths' current pricing (COL.500.029.6485 (at .6485)) and its attachment (COL.500.029.6491) are at **tabs 21-21.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 155 of **tab 21.1**.
- 38 Ultimately, I considered that Down Down was the better promotional strategy for the Nature's Gift 1.2kg Chicken Rice and Vegetables Product because it would mean that the product would consistently be at a low price point for customers and one that was competitive with Woolworths. If Coles had adopted a Hi Lo strategy, then there would likely have been some weeks where Coles would be selling the Natures Gift 1.2kg Chicken Rice and Vegetables Product at its white ticket price, \$5.50. I was concerned Coles would be uncompetitive when that occurred, as the white ticket price was more expensive than Woolworths' retail price of \$4.50. I ultimately set the Down Down price at \$4.00 having had regard to the funding provided by Real Pet Food and the PRRP as first proposed by Real Pet Food on 21 February 2022.
- 39 On 5 April 2022 I was also informed by the Pricing and Value team through a daily price change email that Woolworths had placed the Natures Gift 1.2kg Chicken Rice & Vegetables Product to a promotional price of \$4.00. A copy of that email (COL.501.007.6752 (at .6572_0001)) and its attachment (COL.501.007.6753) are at **tabs 25-25.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 17 of **tab 25.1**.
- 40 This meant that Coles would still be competitive with Woolworths if I proceeded with the proposed Down Down price of \$4.00 and so I was content to go ahead with that plan.
- 41 On 8 April 2022, Simon Russell at Real Pet Food emailed me an updated promotional plan. For the Natures Gift 1.2kg Chicken Rice and Vegetables Product, Real Pet Food proposed the same promotional strategy but offered additional funding. On 12 April 2022, I replied informing Real Pet Food that I would agree to the promotional plan with Real Pet Food on 12 April 2022 subject to this additional funding and requesting the final Promotional Advice Form (**PAF**) to reflect this agreement. PAFs record the agreement between Coles and the supplier of the details of

promotional strategies and any funding provided by suppliers to support those strategies. A copy of this email (COL.501.075.5914) is at **confidential tab 26 of Exhibit PC-1**.

42 I received the final PAF for the Nature's Gift 1.2kg Chicken Rice & Vegetables Product from Real Pet Food the next day. This provided that the product was to be sold on Down Down at \$4 from 18 April 2022 to 17 April 2023. This price represented a \$1.50 discount from the white ticket price and was supported by promotional funding from Real Pet Food of \$[REDACTED] per unit. Emails that I sent and received during this period include those at **confidential tabs 26 and 28** (including any attachments) **and tab 27** (including its confidential attachments) **of Exhibit PC-1**.

F.2 REAL PET FOOD'S SECOND CPA REQUEST

43 On 14 November 2022, Simon Russell from Real Pet Food notified me of a second CPA to take effect on 6 February 2023 (**Second RPF CPA**). I received further emails from Simon Russell at Real Pet Food on 14 and 15 November 2022 with further information in support of the Second RPF CPA. Emails that I received during this period are at **tabs 29 to 31** (including any attachments) **of Exhibit PC-1**, with **tab 31** only including attachments that refer to the Natures Gift 1.2kg Chicken Rice and Vegetables Product.

44 In relation to the Nature's Gift 1.2 Chicken, Rice & Vegetables Product, Real Pet Food proposed an increase in the list price from \$[REDACTED] to \$[REDACTED], and an increase in the RRP from \$5.50 to \$6.

45 On 29 November 2022, I received two emails from the VMO team with their analysis of the Second RPF CPA. The VMO assessed that if Coles agreed to the CPA request, its 'costs' in respect of the product (assessed in the way I described in paragraph 26 above) would increase by 10.6% overall, and by 9.0% for the Nature's Gift 1.2kg Chicken Rice & Vegetables Product.

46 The VMO team was unable to fully validate Real Pet Food's increase in costs using either the 'average movement' or P2P methodology. However, it was able to validate a 9% increase in costs in respect of the Nature's Gift 1.2kg Chicken Rice & Vegetables Product using both approaches. The VMO's emails and analysis are at **tabs 32-32.4 of Exhibit PC-1 (Average movement methodology: COL.501.073.5942 and its attachments (COL.501.073.5943, COL.501.073.5944, COL.501.073.5951 and COL.501.073.5953), with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 41 of tab 32.3) and tabs 33-33.1 of Exhibit PC-1 (P2P approach: COL.501.081.7689, and its attachment (COL.501.081.7690), with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 41 of tab 33.1)**.

47 On 11 December 2022, I emailed Simon Russell at Real Pet Food and informed him that I would partially accept the Second RPF CPA based on the VMO team's analysis of the claimed cost increases. A copy of this email (COL.501.076.9235) and its attachment (COL.501.076.9236) are at **tabs 34-34.1 of Exhibit PC-1**.

48 Between 12 December 2022 to 2 February 2023, I received from and discussed with Real Pet Foods several versions of its proposed trade plan. The first version of the plan, which Real Pet Foods provided to me on 12 December 2022, provided for the Nature's Gift 1.2 kg Chicken Rice and Vegetable product to be sold at a white ticket price of \$6.00 and later placed on a Down Down promotion with a PRRP of \$4.50.

49 I didn't consider that the proposal included sufficient funding to support the promotional price. From 12 December 2022 to 2 February 2023, I negotiated with Real Pet Food over a series of draft promotional plans that included the same promotional strategies but different levels of promotional funding from Real Pet Food. Emails I received or sent during this period include those at **confidential tabs 35-36, 39-40 and 42-43** (including any attachments), and **tabs 37, 38 and 41** (including their confidential attachments) **of Exhibit PC-1**.

50 On 3 February 2023, I received an email from Lauren Creighton at Real Pet Food with a populated cost change form. A cost change form sets out the new cost prices to be input into

Coles' systems once the pricing and promotional details have been agreed and the CPA is implemented. Real Pet Food's proposal in respect of the Natures Gift 1.2kg Chicken Rice and Vegetables Product remained the same. That is, it proposed to have a new RRP for the product of \$6.00 (effective 8 February 2023) and for the product to be sold on Down Down at \$4.50 commencing 8 March 2023. A copy of that email (COL.500.029.6754) and the attached cost change form (COL.500.029.6756) are at **tabs 44-44.1 of Exhibit PC-1**.

- 51 On 3 February 2023, I emailed Simon Russell at Real Pet Food confirming the Coles accepted the Second RPF CPA based on Real Pet Foods' revised investment proposal. Emails that I received and sent on this day include those at **confidential tab 43 and tab 44** (including any attachments) **of Exhibit PC-1**.
- 52 I set the new white ticket price for the Nature's Gift 1.2kg Chicken Rice & Vegetables Product at \$6.00, which was Real Pet Foods' RRP for the product. I considered that RRP to be appropriate for the reasons referred to in 13 above. On 8 February 2023, the Nature's Gift 1.2kg Chicken Rice & Vegetables Product moved to a white ticket price of \$6.00, which is confirmed in an email from the Pricing and Value team the next day. This email also indicated that the Woolworths price for the Natures Gift 1.2kg Chicken Rice & Vegetables Product was also \$6.00. A copy of this email (COL.500.030.0437 (at .0437_0002)) and its attachment (COL.500.030.0443) dated 9 February 2023 are at **tabs 45-45.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 294 of **tab 45.1**.
- 53 I intended for the Nature's Gift 1.2kg Chicken Rice & Vegetables Product to be held at the new white ticket price for 28 days from 8 February 2023 until 8 March 2023, consistent with the cost change form sent by Real Pet Food on 3 February 2023 (as discussed above in 50). However, on 9 February 2023, I received an email from the Pricing and Value team with the daily price change report, which showed that Woolworths was selling the product for \$4.50. A copy of this email (COL.501.009.8146 (at .8146_0001)) and its attachment (COL.501.009.8147) are at **tabs 46-46.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 23 of **tab 46.1**.
- 54 I was concerned that this made Coles' uncompetitive and that Coles' customers were paying higher prices than Woolworths customers. To address this, on 10 February 2023 I sought guidance from Chris Reid, Head of Pricing and Value at Coles at the time, seeking permission for Coles to expedite some planned Down Down promotions, including for the Nature's Gift 1.2kg Chicken Rice & Vegetables Product.
- 55 Later that day, Chris Reid said that I could reduce the price of the Nature's Gift 1.2kg Chicken Rice & Vegetables Product immediately on a white ticket, but that I could not place the product on Down Down yet given the need to establish the new non-promotional price for 4 weeks. In light of this, I asked Real Pet Food to provide funding to support a lower white ticket price. Emails that I sent or received in this regard include those at **tabs 47 and 48 of Exhibit PC-1**.
- 56 On 13 February 2023, Lauren Creighton at Real Pet Food sent me a PAF, which provided that the Nature's Gift 1.2kg Chicken Rice & Vegetables Product was to be sold at \$4.50 on Down Down from 15 February 2023 to 10 September 2023, and that Real Pet Food would provide funding of \$**RE** per unit. A copy of this email (COL.500.029.6736 (at .6736)) is at **tab 49 of Exhibit PC-1** and its attachment at **confidential tab 49.1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Rows 15, 20 and 25 of **confidential tab 49.1**.
- 57 At this time, I had already started in my new role at Swaggle. I do not recall checking the content of this PAF and believe that I did not do so. The PAF provided for the start date of the Down Down promotion for the Nature's Gift 1.2kg Chicken Rice & Vegetable Product to be brought forward from 8 March 2023 to 15 February 2023. That was not what I had in mind would occur (which was to reduce the white ticket price of the product). This was an oversight on my part.

- 58 The PAF was keyed on 14 February 2023. A copy of this email (COL.500.029.6597) is at **tab 50 of Exhibit PC-1**, and its attachment at **confidential tab 50.1** (COL.500.029.6599). I have excluded from that tab attachments that do not refer to the Nature's Gift 1.2kg Chicken Rice and Vegetables Product. The Nature's Gift 1.2kg Chicken Rice and Vegetables Product appears at Row 25 of **confidential tab 50.1**.
- 59 On 15 February 2023, I received an email from the Pricing and Value team with the daily price change report. This price change report showed that the Nature's Gift 1.2kg Chicken Rice & Vegetables Product had moved to \$4.50 on a Down Down ticket, matching Woolworths' pricing for that product. At the time of receiving this email I did not notice that the price change for Nature's Gift 1.2kg Chicken Rice & Vegetables Product occurred on a Down Down ticket instead of a white ticket. A copy of this email (COL.500.029.4630 (at .4630)) and its attachment (COL.500.029.4633) are at **tabs 51-51.1 of Exhibit PC-1**, with the Nature's Gift 1.2kg Chicken Rice and Vegetables Product appearing at Row 13 of **tab 51.1**.

G. MARS' CPI REQUEST

- 60 On 17 June 2022, Justin Conkling, Customer Development Director for Coles Supermarkets of Mars, submitted a CPA request to take effect on 12 September 2022 for claimed cost increases across 206 products in the Treats, Wet Pet Food, Dry Pet Food and Cat Litter categories (the **2022 Mars CPA Request**), including of Pedigree Adult Wet Dog Food With 5 Kinds of Meat Loaf 1.2kg Can (SKU ID: 255409) (the **Pedigree 1.2kg 5 Kinds of Meat Loaf Product**).
- 61 A copy of the request (COL.500.008.2648) and its attachments (COL.500.008.2649 and COL.500.008.2650) are at **tabs 1-1.2 of Exhibit PC-2**. The Pedigree 1.2kg 5 Kinds Meat Loaf Product appears at Row 53 in the worksheet titled 'Wet Can' of **tab 1.1 of Exhibit PC-2**. Mars proposed to increase the list price of that product from \$**REDACTED** to \$**REDACTED** per carton.
- 62 The VMO assessed that if Coles agreed to the CPA request, Coles' 'costs' in respect of the product (again, assessed in the way I described in paragraph 26 above) would increase by 13.8% overall, and by 20.1% for the Pedigree 1.2kg 5 Kinds Meat Loaf Product. A copy of the VMO's emails and analysis are at **tabs 2-2.4 of Exhibit PC-2 (Average movement methodology: COL.500.008.2697 and its attachments (COL.500.008.2699, COL.500.008.2700, COL.500.008.2701 and COL.500.008.2702)**, with the Pedigree 1.2kg 5 Kinds Meat Loaf Product appearing at Row 70 of **tab 2.1) and tabs 3-3.1 of Exhibit PC-2 (P2P approach: COL.501.080.7612 and its attachment (COL.501.080.7613)**, with the Pedigree 1.2kg 5 Kinds Meat Loaf Product appearing at Row 70 of **tab 3.1)**.
- 63 The 2022 Mars CPA Request was the second significant CPA request Coles had received from Mars in six month period. Mars' previous CPA request was submitted shortly before I joined the Pet category in November 2021 (but I negotiated and finalised it after I moved into the role) (**2021 Mars CPA Request**). Following the 2021 Mars CPA Request, the white ticket price of Pedigree 1.2kg 5 Kinds of Meat Loaf Product had increased from \$3.50 to \$4.50.
- 64 Receiving two CPA requests in a six month period put some strain on our relationship. When the previous CPA was submitted, Coles and Mars had planned and agreed on the promotional strategy and funding for a 52-week period. Receiving the 2022 Mars CPA Request shortly after the previous one was finalised meant that all promotional strategies needed to be reconsidered. This also created administrative challenges for my team.
- 65 By the time the 2022 Mars CPA Request was submitted, Coles had arranged for additional staff in the Merchandise Strategy & Transformation team at Coles to assist category managers in assessing some of the CPA requests and associated proposed trade plans due to the volume of CPA requests that Coles was receiving from suppliers at the time. For the 2022 Mars CPA

Request, I worked with Brian Keane, Commercial Development Manager, Merchandise Strategy & Transformation at Coles.

- 66 On 6 July 2022, I received the VMO team's analysis of the 2022 Mars CPA Request. The VMO had validated a 6.1% increase in Mars' costs of the relevant products using the average movement methodology and a 9.5% increase in its costs using the P2P methodology. In relation to the Pedigree 1.2kg 5 Kinds Meat Loaf Product, the VMO team validated an 8.1% increase in Mars' costs using the average movement methodology and an 11.3% increase in its costs using the P2P methodology.
- 67 At my request, Luke Nankervis at Mars provided me with a proposed trade plan on 8 July 2022. I asked for this trade plan because any increase in the supplier's cost price would have knock on effects for the promotions that were already planned for Mars products in Pet by shifting the economics that underpinned the trade plan. The email (COL.500.025.1354) I received from Luke Nankervis is at **tab 4 of Exhibit PC-2** and its attachment at **confidential tab 4.1** (COL.500.025.1357).
- 68 Mars' proposed trade plan contained information about the current and proposed promotional strategy for each of the products impacted by the 2022 Mars CPA Request. For the Pedigree 1.2kg 5 Kinds of Meat Loaf Product, Mars proposed that following the 2022 Mars CPA Request, the product be sold at a white ticket price of \$5.50 for four weeks, then on Down Down promotion at \$4.50 (see Row 252 of **confidential tab 4.1 of Exhibit PC-2**). Mars' summary of the 'current' promotional tactics for the product did not reflect Coles' actual prices at the time in two key respects (Row 251 of **confidential tab 4.1 of Exhibit PC-2**):
- (a) First, it identified the RRP of the product as \$4.30. In the course of negotiating the 2021 Mars CPA Request, to respond to market movements, I decided to set Coles' white ticket price at \$4.50 which was above Mars' RRP (see row 251 of **confidential tab 4.1 of Exhibit PC-2**).
 - (b) Second, it referred to the promotional price of the product as \$4.00. In the course of negotiating the 2021 Mars CPA Request, Mars had proposed a promotional plan that involved selling the product on Down Down promotion at \$4.00. However, I did not agree to that course. I did not consider the plan to be appropriate. Mars had sought to increase the list and retail prices but decrease its funding support. As a result, I decided not to sell the product on Down Down at \$4.00 as Mars had proposed, and instead sell it under a white ticket at a price of \$4.50, until Mars submitted a proposed promotional plan that I considered to be appropriate. A copy of the historical email exchange between Luke Nankervis at Mars and me dated 29 March 2022 (COL.500.029.7006) is at **confidential tab 5 of Exhibit PC-2**.
- 69 On 15 July 2022, I provided the VMO team's analysis of Mars' CPA request to Luke Nankervis and Justin Conkling at Mars. A copy of this email (COL.500.025.1581) and its attachment (COL.500.025.1586) are at **tabs 6-6.1 of Exhibit PC-2**, with the Pedigree 1.2kg 5 Kinds of Meat Loaf Product appearing at Row 70 of **tab 6.1**.
- 70 Between July and September 2022, Mars submitted two further trade plan proposals, on 29 July 2022 and 1 September 2022. The emails that I received with the proposals are at **confidential tabs 7 to 9** (including any attachments) **of Exhibit PC-2**.
- 71 I assessed these further proposed trade plans with the assistance of the Merchandise Strategy & Transformation team. While each of these plans contained improved commercial terms compared to Mars' initial trade plan proposal, I ultimately decided not to accept either of them because I wanted to offset the impact of the CPA, and return added value back to the customer by securing:

- (a) additional trade incentives, for example, in the form of media assets to showcase the product such as television advertisements, cardboard stands at the end of the aisle, or a 'volume override' where the supplier would provide certain funding if the product sold certain volumes), or
- (b) promotional funding to bridge the gap between the CPA Mars had sought and the amount of Mars' claimed increase in costs that Coles had been able to validate.

Emails which I sent or received in relation to this consideration include those at **confidential tabs 10 to 13** (including any attachments) of **Exhibit PC-2**.

72 As the CPA effective date of 12 September 2022 was approaching, I was in regular contact with Luke Nakervis at Mars over both email and phone. I do not recall specifically what was discussed with Luke, however at this point, I recall that it seemed unlikely that Mars would close the entire gap with Coles, and that Mars may choose to stop supply if we could not agree on a promotional plan.

73 I approved the 2022 Mars CPA Request in full on 8 September 2022. I also agreed to the proposed promotional plan, which I was happy with because Mars had agreed to provide additional funding on top of its most recent proposal dated 1 September 2022. A copy of my approval email to Luke Nankervis at Mars (COL.500.025.1623 (at .1623)) and its attachments (COL.500.025.1632, COL.500.025.1635 and COL.500.025.1638) are at **confidential tabs 14-14.3 of Exhibit PC-2**, excluding attachments that do not refer to the Pedigree 1.2kg 5 Kinds Meat Loaf Product.

74 I set the new white ticket price for the Pedigree 1.2kg 5 Kinds Meat Loaf Product at \$5.50, which was Mars' RRP for the product. I considered that it was appropriate for the reasons referred to in paragraph 12 above. The promotional plan provided for it to be placed on Down Down promotion at a price of \$4.50 from 10 October 2022. As noted above, I was content with the overall promotional plan. I expected \$4.50 to be a competitive promotional price for the product.

75 On 9 September 2022, Mars provided a completed cost change form and updated PAFs. In relation to the Pedigree 1.2kg 5 Kinds Meat Loaf Product, these documents confirmed:

- (a) a 20.06% increase in the list price;
- (b) an increase to the RRP from \$4.30 to \$5.50 effective 12 September 2022;
- (c) the product would be placed on Down Down commencing 10 October 2022 at \$4.50;
- (d) funding of \$RE as a business scan warehouse deal (which is payable to Coles per unit scanned at the register) , which would apply from 12 September 2022 until 3 January 2023; and
- (e) a promotional scan deal of \$RE, which would apply between 10 October 2022 and 31 December 2022, conditional on a maximum promotional sell price of \$4.50.

Emails which I received attaching the finalised cost change form, PAF and trade plan are at **tabs 15** (including any attachments) **and 16.3 and confidential tabs 16-16.2 and 17-17.1 of Exhibit PC-2**, with **confidential tab 16** only including attachments that refer to the Pedigree 1.2kg 5 Kinds Meat Loaf Product.

76 On 12 September 2022, the Pedigree 1.2kg 5 Kinds Meat Loaf Product moved to \$5.50 on a white ticket. A few days later, Woolworths reduced its pricing from \$5.20 to \$4.50 on a 'Low Prices' ticket. A copy of the email from the Pricing and Value team outlining the Woolworths price changes for 15 September 2022 (COL.501.018.3090 (at .3090_0001)) and its attachment (COL.501.018.3091) are at **tabs 18-18.1 of Exhibit PC-2**, with the Pedigree 1.2kg 5 Kinds of Meat Loaf Product appearing at Row 54 of **tab 18.1**.

77 On 10 October 2022, the Pedigree 1.2kg 5 Kinds Meat Loaf Product moved to \$4.50 on a Down Down ticket, as agreed with Mars.

Sworn by the deponent
at South Yarra, Victoria
on 18 November 2025
Before me:

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)
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REDACTED - PII

Signature of deponent

REDACTED - PII

Signature of witness

KELLY ANNE ROBERTS
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)