

NOTICE OF FILING

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File Title: ROSHANPAL SINGH & ORS v KENTUCKY FRIED CHICKEN PTY LTD
ACN 000 587 780 & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



**Defence of the First Respondent to the Amended Consolidated
Statement of Claim**

No. VID 887 of 2023

Federal Court of Australia
District Registry: Victoria
Division: Fair Work

ROSHANPAL SINGH & Ors

Applicants

KENTUCKY FRIED CHICKEN PTY LTD (ACN 000 587 780) & Ors

Respondents

To the Applicants' Amended Consolidated Statement of Claim filed ~~21 May~~ 29 July 2024
(**Claim**), the First Respondent (**KFCPL**) says as follows.

Except as indicated below, KFCPL adopts the headings and definitions in the Claim. No admissions are thereby implied.

A. PRELIMINARY

The Applicants

1. KFCPL does not know and therefore cannot admit paragraph 1.
2. KFCPL does not know and therefore cannot admit paragraph 2.

Filed on behalf of (name & role of party) Kentucky Fried Chicken Pty Ltd, the First Respondent
Prepared by (name of person/lawyer) Michael Michalandos / David McCredie
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3. KFCPL admits paragraph 3.
4. In response to paragraph 4, KFCPL:
 - (a) says, as to sub-paragraph 4(b), that in the period October 2016 to August 2018 Mr Westgarth was employed by KFCPL in the position of team member and performed work in the following restaurants owned by KFCPL:
 - (i) at the KFC Restaurant located at Westfield Marion, Level 1/501 Morphett Rd, Marion, South Australia from October 2016 to February 2018;
 - (ii) at the KFC Restaurant located at 142 Beach Rd, Noarlunga Centre, South Australia from February 2018 to August 2018;
 - (iii) was employed pursuant to the *KFC National Enterprise Agreement 2009*;
 - (iv) in respect of the definition 'KFC Restaurant' in the Claim, for the avoidance of doubt, KFCPL says for the purpose of this defence, this definition includes a KFCPL Operated Restaurant and a Franchisee operated restaurant; and
 - (v) otherwise denies sub-paragraphs 4(a) and 4(b).
 - (b) admits sub-paragraph 4(d) only in respect of the period October 2016 to August 2018 and does not know and therefore cannot admit the remainder of sub-paragraph 4(d); and
 - (c) does not know and therefore cannot admit sub-paragraphs 4(c).
5. KFCPL does not know and therefore cannot admit paragraph 5.
6. KFCPL does not know and therefore cannot admit paragraph 6.

7. KFCPL does not know and therefore cannot admit paragraph 7.

8. KFCPL does not know and therefore cannot admit paragraph 8.

9. KFCPL does not know and therefore cannot admit paragraph 9.

10. In response to paragraph 10, KFCPL:

(a) says that in the period June 2006 to December 2022, Ms Hall was employed by KFCPL and performed work in certain positions in the following restaurants owned by KFCPL:

(i) at the KFC Restaurant located at 84 Princes Highway, Unanderra, New South Wales in the position of team member from June 2006 to July 2012;

(ii) at the KFC Restaurant located at 145-147 Tongarra Rd, Albion Park, New South Wales on secondment in the position of assistant restaurant manager from January 2015 to June 2015;

(iii) at the KFC Restaurant located at 84 Princes Highway, Unanderra, New South Wales in the position of team member (discharging shift supervisor responsibilities from time to time) from July 2012 to June 2020 save for the period mentioned in (ii) above and the following periods during which Ms Hall was acting in an assistant restaurant manager position:

1. November 2016 to April 2017;
2. December 2019 to January 2020; and
3. April 2020 to May 2020;

(iv) was employed pursuant to various industrial instruments during the period June 2006 to December 2022 including the *KFC National Enterprise Agreement 2005*, the *KFC National Enterprise Agreement 2009*, *KFC National Enterprise Agreement 2020* and the *Fast Food Industry Award 2010* and the *Fast Food Industry Award 2020*;

(b) admits sub-paragraph 10(d);

(c) admits sub-paragraph 10(e); and

(d) otherwise denies the allegations in paragraph 10.

11. KFCPL does not know and therefore cannot admit paragraph 11.

Representative Proceeding

12. ~~Save for the First Claim Period in paragraph 12(d) commencing on 25 October 2017 (and not 24 October 2017),~~ KFCPL relies on its pleading below with respect to the allegations adverted to in paragraph 12, and otherwise does not plead to paragraph 12 as no allegations are made against it.

Particulars

~~The Proceeding (VID 887/2023) was commenced on 25 October 2023 not 24 October 2023.~~

13. KFCPL does not know and therefore cannot admit paragraph 13.

The Respondents

14. In response to paragraph 14, KFCPL:
 - (a) admits sub-paragraph 14(a); and
 - (b) admits KFCPL is a national system employer within the meaning of section 14 of the FW Act and otherwise does not know and therefore cannot admit sub-paragraph 14(b).

15. In response to paragraph 15, KFCPL:
 - (a) says, as to sub-paragraph 15(a), that:
 - (i) since around late 2014, it has been a wholly owned subsidiary of A.C.N. 085 239 998 Pty Ltd (ACN 085 239 998); and
 - (ii) it otherwise denies sub-paragraph 15(a);
 - (b) denies sub-paragraph 15(b) and says further that:
 - (i) the owner of the KFC trademarks is KFC THC V Limited, incorporated in Malta;
 - (ii) the owner of the KFC systems is Kentucky Fried Chicken International Holdings LLC, incorporated in the United States of America; and
 - (iii) KFCPL has been granted the right to use the intellectual property and KFC systems in Australia and to on-grant certain franchising rights, including to Franchisees at specific franchise outlets;
 - (c) admits sub-paragraph 15(c); and
 - (d) admits sub-paragraph 15(d).

16. In response to paragraph 16, KFCPL:
- (a) denies the allegations insofar as they allege that during the Claim Periods (or parts thereof) the Twelfth Respondent and the Fiftieth Respondent were parties to written franchisee agreements with KFCPL as franchisor;
 - (b) says that during the Claim Periods KFCPL did not have a written franchise agreement or franchisee agreements with:
 - (i) the Twelfth Respondent;
 - (ii) the Fiftieth Respondent; or
 - (iii) the Seventy-Second Respondent;
 - (c) says further that during the Claim Periods (or parts thereof) it had a written licensing agreement or licensing agreements with the Seventy-Second Respondent;
 - (d) admits that during the Claim Periods (or parts thereof) it had a written franchise agreement or franchisee agreements with the Respondents save for the Twelfth Respondent, the Fiftieth Respondent and the Seventy-Second Respondent; and
 - (e) otherwise admits the allegations in paragraph 16.
17. In response to paragraph 17, KFCPL refers to and repeats paragraph 16 above and admits paragraph 17 only insofar as there existed a franchise agreement during the Claim Periods.

B. THE INDUSTRIAL INSTRUMENTS

2009 Agreement

18. KFCPL admits paragraph 18.

19. KFCPL admits paragraph 19.
20. KFCPL admits paragraph 20.
21. KFCPL admits paragraph 21.
22. KFCPL denies paragraph 22 and says that while the 2009 Agreement applied to:
 - (a) the employers falling within the coverage provision of the 2009 Agreement; and
 - (b) the employees within the classifications of the 2009 Agreement;the Award did not apply to them.

Particulars

Section 57 of the FW Act.

23. In response to paragraph 23, KFCPL:
 - (a) admits sub-paragraph 23(a) insofar as the 2009 Agreement applied to KFCPL;
 - (b) admits sub-paragraph 23(b);
 - (c) admits sub-paragraph 23(c); and
 - (d) otherwise denies the allegations in paragraph 23.

Particulars

KFCPL does not know whether the 2009 Agreement applied to subsidiaries of KFCPL.

24. In response to paragraph 24, KFCPL says:
 - (a) clause 11 of the 2009 Agreement provides as follows:
 11. REST PAUSES
 - 11.1 Each employee who works more than 4 hours continuously on any day shall be allowed a paid rest pause of 10 minutes. The timing of this break shall be arranged by the employer when convenient for it to be taken.
 - 11.2 An additional 10 minutes rest pause shall be provided when an employee works more than 8 hours on any one shift.

- 11.3 In lieu of the above, Call Centre employees may have a 5 minute paid rest pause every two hours.
- 11.4 Except as provided in this subclause, no rest pause shall be given or taken within one hour of an employee's commencing or ceasing time or within one hour before or after any meal break. Where a part-time or part time flex or casual employee is required to work up to one hour beyond the employee's rostered finishing time in order to meet unforeseen operational or staffing requirements, a rest pause may be taken within one hour of the employee's ceasing time.

- (b) it will at trial rely upon the whole of the 2009 Agreement for its full force and effect;
- (c) the proper construction of clause 11 is set out in paragraph 56 below; and
- (d) it otherwise denies the allegations in paragraph 24.

25. In response to paragraph 25, KFCPL:

- (a) admits the 2009 Agreement operated beyond its nominal expiry date;
- (b) admits the 2009 Agreement ceased applying to KFCPL and the employees falling within its classifications when the 2020 Agreement commenced;
- (c) does not admit the 2009 Agreement ceased applying to all Franchisees when the 2020 Agreement commenced because it does not know whether the 2020 Agreement was validly approved in respect of any of the Franchisees; and
- (d) otherwise denies the allegations in paragraph 25.

Particulars

The 2020 Agreement states that it covers the franchisees and their associated companies listed in Schedule A to the 2020 Agreement. The published version of Schedule A on the Fair Work Commission website is, however, blank and no employing entities are listed there. Further particulars may be provided.

2010 Agreement

26. KFCPL admits paragraph 26.

- 27. KFCPL admits paragraph 27.
- 28. KFCPL admits paragraph 28.
- 29. KFCPL admits paragraph 29.
- 30. KFCPL denies the allegations in paragraph 30 and says that while the 2010 Agreement applied to:
 - (a) the employers falling within the coverage provision of the 2010 Agreement; and
 - (b) the employees falling within the classifications of the 2010 Agreement;the Award did not apply to them.

Particulars

Section 57 of the FW Act.

- 31. In response to paragraph 31, KFCPL:
 - (a) denies sub-paragraph 31(a); and
 - (b) admits sub-paragraph 31(b).

Particulars

KFC and its subsidiaries are not parties to, and do not fall within the coverage provisions of, the 2010 Agreement.

- 32. In response to paragraph 32, KFCPL says:
 - (a) clause 11 of the 2010 Agreement provides as follows:
 - 11. REST PAUSES
 - 11.1 Each employee who works more than 4 hours continuously on any day shall be allowed a paid rest pause of 10 minutes. The timing of this break shall be arranged by the employer when convenient for it to be taken.
 - 11.2 An additional 10 minutes rest pause shall be provided when an employee works more than 8 hours on any one shift.
 - 11.3 In lieu of the above, Call Centre employees may have a .5 minute paid rest pause every two hours.

11.4 Except as provided in this subclause, no rest pause shall be given or taken within one hour of an employee's commencing or ceasing time or within one hour before or after any meal break. Where a part-time or part time flex or casual employee is required to work up to one hour beyond the employee's rostered finishing time in order to meet unforeseen operational or staffing requirements, a rest pause may be taken within one hour of the employee's ceasing time.

- (b) it will at trial rely upon the whole of the 2010 Agreement for its full force and effect;
- (c) the proper construction of clause 11 is set out in paragraph 56 below; and
- (d) it otherwise denies the allegations in paragraph 32.

33. In response to paragraph 33, KFCPL:

- (a) admits the 2010 Agreement operated beyond its nominal expiry date;
- (b) admits the 2010 Agreement ceased applying to the employers falling within the coverage provision of the 2020 Agreement and the employees within its classifications when the 2020 Agreement commenced;
- (c) does not admit the 2010 Agreement ceased applying to all Franchisees when the 2020 Agreement commenced because it does not know whether the 2020 Agreement was validly approved in respect of any of the Franchisees; and
- (d) otherwise denies the allegations in paragraph 33.

Particulars

The 2020 Agreement states that it covers the franchisees and their associated companies listed in Schedule A to the 2020 Agreement. The published version of Schedule A on the Fair Work Commission website is, however, blank and no employing entities are listed there. Further particulars may be provided prior to trial.

Collins Foods Agreement

34. KFCPL admits paragraph 34.

35. KFCPL admits paragraph 35.

36. KFCPL admits paragraph 36.

37. In response to paragraph 37, KFCPL says:

(a) clauses 2.2 and 2.3 of the Collins Foods Agreement provided as follows:

2.2 PARTIES TO AGREEMENT AND PARTIES BOUND

2.2.1 The parties to this Agreement are - Collins Restaurants Management Pty Ltd (ABN 24093912979) and Collins Restaurants NSW Pty Ltd (ABN 32094786142) (herein after referred to as the "Employer"); Employees appointed and classified under this Agreement (herein after referred to as "Employees"); and the respective Unions.

2.2.2 This Agreement is legally binding upon the Employer; the Employees; the Unions and their members.

2.3 COVERAGE OF AGREEMENT

2.3.1 This Agreement shall apply to the Employer and all Team Members classified under this Agreement employed in the Employer's KFC Operations in Queensland (Qld) and New South Wales (NSW).

2.3.2 This Agreement does not apply to any Employee who is appointed as a Trainee Manager; Assistant Manager or Restaurant General Manager or who has the right to hire and fire and/or acts in any way in a managerial role; and

(b) it otherwise denies the allegations in paragraph 37.

38. In response to paragraph 38, KFCPL:

(a) denies sub-paragraph 38(a); and

(b) as to sub-paragraph 38(b), admits the Collins Foods Agreement applied to the Twelfth and Thirteenth Respondents.

Particulars

KFC and its subsidiaries are not parties to, and do not fall within the coverage provisions of, the Collins Foods Agreement.

39. In response to paragraph 39, KFCPL says:

(a) clause 10.4 of the Collins Foods Agreement provided as follows:

10.4 REST PAUSES

- 10.4.1 Full-Time Employees shall receive a rest pause of 10 minutes' duration in the first half and the second half of each day worked.
- 10.4.2 Part-Time and Casual Employees Part-Time and Casual Employees who work a minimum of four (4) consecutive ordinary hours, but less than 7.6 consecutive ordinary hours on any one day shall receive a rest pause of 10 minutes' duration. Employees who work a minimum of 7.6 consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.
- 10.4.4 Rest pauses shall be taken in the Employer's time.
- 10.4.4 Rest pauses shall be taken at such times and in such a manner to suit the convenience of the Employer and so as not to interfere with the continuity of work where continuity is necessary.
- 10.4.5 Notwithstanding the provisions of Clause 10.4.1, where the Employer and Employees agree, the rest pauses may be combined so that Employees have one rest pause of 20 minutes' duration;

- (b) it will at trial rely upon the whole of the Collins Foods Agreement for its full force and effect;
- (c) the proper construction of clause 10.4 is set out in paragraph 56 below; and
- (d) it otherwise denies the allegations in paragraph 39.

40. In response to paragraph 40, KFCPL:

- (a) admits the Collins Foods Agreement continued to operate beyond its nominal expiry date;
- (b) does not admit the Collins Foods Agreement ceased applying to the Twelfth and Thirteenth Respondents because it does not know whether the 2020 Agreement was validly approved in respect of any of the Franchisees; and
- (c) otherwise denies the allegations in paragraph 40.

Particulars

The 2020 Agreement states that it covers the franchisees and their associated companies listed in Schedule A to the 2020 Agreement. The published version of Schedule A on the Fair Work Commission website is, however, blank and no employing entities are listed there. Further particulars may be provided prior to trial.

2020 Agreement

41. KFCPL admits paragraph 41.
42. KFCPL admits paragraph 42.
43. KFCPL admits paragraph 43.
44. KFCPL admits paragraph 44 on the basis that the terms "Team Member" and "Shift Supervisor" as used in that paragraph have the same meaning as in clause 4.1 of the 2020 Agreement.
45. KFCPL denies the allegations in paragraph 45 and says that while the 2020 Agreement applied to:
 - (a) the employers falling within the coverage provisions of the 2020 Agreement; and
 - (b) the employees within the classifications of the 2020 Agreement;the Award did not apply to them.

Particulars

Section 57 of the FW Act.

46. In response to paragraph 46, KFCPL:
 - (a) admits sub-paragraph 46(a) insofar as the 2020 Agreement applied to KFCPL;
 - (b) does not know whether the 2020 Agreement was validly approved in respect of RG Restaurants and therefore cannot admit sub-paragraph 46(b);
 - (c) does not know whether the 2020 Agreement was validly approved in respect of Southern Restaurants and therefore cannot admit sub-paragraph 46(c);

- (d) does not know whether the 2020 Agreement was validly approved in respect of Collins Restaurant Management and therefore cannot admit sub-paragraph 46(d);
- (e) does not know whether the 2020 Agreement was validly approved in respect of Collins Restaurants South and therefore cannot admit sub-paragraph 46(e);
- (f) does not know whether the 2020 Agreement was validly approved in respect of Collins Restaurants West and therefore cannot admit sub-paragraph 46(f);
- (g) does not know whether the 2020 Agreement was validly approved in respect of QSR and therefore cannot admit sub-paragraph 46(g);
- (h) does not know whether the 2020 Agreement was validly approved in respect of Pansummit and therefore cannot admit sub-paragraph 46(h);
- (i) says, in respect of sub-paragraph 46(i), that there are no Franchisees listed in Schedule A to the 2020 Agreement; and
- (j) otherwise does not know and therefore cannot admit sub-paragraph 46(j).

Particulars

KFCPL does not know:

- (A) whether the 2020 Agreement applied to subsidiaries of KFCPL;
- (B) whether the 2020 Agreement applied to new Franchisees and their associated companies.

47. In response to paragraph 47, KFCPL says:

- (a) clause 12 of the 2020 Agreement provides as follows:

12 REST PAUSES

12.1 Each employee who works 4 hours or more continuously on any day shall be allowed a paid rest pause of 10 minutes. The timing of this break shall be arranged by the employer when convenient for it to be taken.

12.2 An additional 10 minutes rest pause shall be provided when an employee works more than 8 hours on any one shift.

12.3 Except as provided in this subclause, no rest pause shall be given or taken within one hour of an employee's commencing or ceasing time or within one hour before or after any meal break. Where a part-time or casual employee is required to work up to one

hour beyond the employee's rostered finishing time in order to meet unforeseen operational or staffing requirements, a rest pause may be taken within one hour of the employee's ceasing time.

- (b) it will at trial rely upon the whole of the 2020 Agreement for its full force and effect;
- (c) the proper construction of clause 12 is set out in paragraph 56 below; and
- (d) it otherwise denies the allegations in paragraph 47.

Fast Food Industry Award

48. KFCPL admits paragraph 48.

49. In response to paragraph 49, KFCPL:

- (a) says the Award applied to the Respondents when:
 - (i) they were operating in the "fast food industry";
 - (ii) they were employing employees falling within the classifications of the Award; and
 - (iii) there was no validly approved enterprise agreement that applied to the Respondents and the Respondents' employees in relation to their particular employment;
- (b) says the Award did not apply to the Respondents when:
 - (i) the 2009 Agreement applied to the Respondents falling within the coverage provision of the 2009 Agreement and "Employees" as defined by the 2009 Agreement;

- (ii) the 2010 Agreement applied to the Respondents falling within the coverage provision of the 2010 Agreement and “Employees” as defined by the 2010 Agreement;
 - (iii) the Collins Foods Agreement applied to the Respondents falling within the coverage provision of the Collins Foods Agreement and “Employees” as defined by the Collins Foods Agreement; and
 - (iv) the 2020 Agreement applied to the Respondents falling within the coverage provision of the 2020 Agreement and “Employees” as defined by the 2020 Agreement;
- (c) says it does not know whether the 2020 Agreement applied to the Respondents, apart from KFCPL; and
- (d) otherwise denies the allegations in paragraphs 49.

Particulars

KFCPL does not know whether the 2020 Agreement was validly approved in respect of the Franchisees as the published version of Schedule A on the Fair Work Commission website is, however, blank and no employing entities are listed there. Further particulars may be provided.

50. KFCPL admits paragraph 50.

51. In response to paragraph 51, KFCPL says that:

- (a) further to decisions of the Fair Work Commission on 1 April 2022, 8 June 2022 and 11 July 2022, the *Fast Food Industry Award 2010* was varied in accordance with those decisions with effect from 28 July 2022; and
- (b) it otherwise denies the allegations in paragraph 51.

Particulars

Fair Work Commission decisions: [2022] FWCFB 48, [2022] FWC 1444 and [2022] FWC 1722.

52. In response to paragraph 52, KFCPL:

- (a) says that in the period up to and including 27 July 2022 (not 27 July 2020) the Award was named “Fast Food Industry Award 2010” and from 28 July 2022 (not 28 July 2020) was named the “Fast Food Industry Award 2020”; and
- (b) otherwise admits paragraph 52.

Particulars

Fair Work Commission decisions: [2022] FWCFB 48, [2022] FWC 1444 and [2022] FWC 1722. Fair Work Determination PR743528.

53. KFCPL denies the allegations in paragraph 53 and says:

- (a) from its commencement until 27 July 2022, clause 27.1 of the Award stated "*breaks will be given*" and provided as follows:

27. Breaks

27.1 Breaks during work periods

- (a) Breaks will be given as follows:

Hours worked	Rest break	Meal breaks
Less than 4 hours	No rest break	No meal break
4 hours but less than 5 hours	One 10 minute paid rest break	No meal break
5 hours but less than 9 hours	One 10 minute paid rest break	One unpaid meal break of at least 30 minutes but not more than 60 minutes

Hours worked	Rest break	Meal breaks
9 hours or more	One or two 10 minute rest breaks, with one taken in the first half of the work hours and the second taken in the second half of the work hours, two rest breaks will be given unless a second meal break is provided	One or two meal breaks of at least 30 minutes but not more than 60 minutes

- (b) The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.
- (c) An employee cannot be required to take a rest break or meal break within one hour of commencing or ceasing work. An employee cannot be required to take a rest break(s) combined with a meal break.
- (d) The time of taking rest and meal breaks and the duration of meal breaks form part of the roster and are subject to any agreement reached under clause 12.2 regarding a part-time employee's regular pattern of work. An agreed variation pursuant to clause 12.3 or 12.5 may include a variation to the time of taking rest and meal breaks.
- (e) Rest breaks are paid breaks and meal breaks are unpaid breaks.
- (f) An employee cannot work more than five hours without a meal break.;

(b) it will at trial rely upon the whole of the Award for its full force and effect;

(c) since 28 July 2022, clause 14.1 of the Award states that employees are "*entitled to*"

rest and meal breaks and provides as follows:

14 Breaks

14.1 Employees are entitled to rest and meal breaks in the following circumstances:

Table 2—Entitlements to rest and meal breaks

Hours worked per shift	Rest breaks	Meal breaks
Less than 4 hours	No rest break	No meal break
4 hours or more but less than 5 hours	One 10 minute paid rest break	No meal break
5 hours or more but less than 9 hours	One 10 minute paid rest break	One unpaid meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	If 2 unpaid meal breaks are provided:	

Hours worked per shift	Rest breaks	Meal breaks
	One 10 minute paid rest break	Two unpaid meal breaks of at least 30 minutes but not more than 60 minutes
	Or, if 2 unpaid meal breaks are not provided:	
	Two 10 minute paid rest breaks — one to be taken in the first half of the shift and one in the second half of the shift	One unpaid meal break of at least 30 minutes but not more than 60 minutes

NOTE: Rest breaks count as time worked. Meal breaks do not count as time worked.

- 14.2 The timing and duration of rest and meal breaks for part-time employees must be included in the roster and are subject to any agreement made under clause 10.3 regarding a part-time employee's regular pattern of work.
- 14.3 A variation agreed under clauses 10.5 and 10.7 for a part-time employee may include a variation to the time of taking rest and meal breaks.
- 14.4 The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.
- 14.5 An employer cannot require an employee:
- (a) to take a rest break or meal break within the first or the last hour of work; or
 - (b) to take a rest break combined with a meal break; or
 - (c) to work more than 5 hours without taking a meal break;

(d) it will at trial rely upon the whole of the Award for its full force and effect;

(e) the proper constructions of the Awards' rest break clauses are set out in paragraph 56 below.

54. KFCPL refers to and repeats paragraph 53 and otherwise denies the allegations in paragraph 54.

55. KFCPL refers to and repeats paragraph 53 and otherwise denies the allegations in paragraph 55.

Effect of Industrial Instruments

56. KFCPL denies the allegations in paragraph 56 and says on a proper construction of each of the Award, the 2009 Agreement, the 2010 Agreement, the 2020 Agreement, and the Collins Foods Agreement (together, the Industrial Instruments) the entitlement to a rest pause (or, in the case of the Award, a rest break) for a Group Member (excluding a Call Centre employee):
- (a) arose if the pre-conditions set out in the relevant Industrial Instrument were met; and
 - (b) was discharged if the timing requirement in the relevant Industrial Instrument was complied with and a Group Member, in respect of each such rest pause (or in the case of the Award, each such rest break):
 - (i) stopped work for 10 continuous minutes during a shift; or
 - (ii) stopped work for periods of less than 10 minutes which amounted in aggregate to 10 minutes over the course of the shift; or
 - (iii) had the opportunity to stop work for up to 10 continuous minutes, or incremental periods amounting to 10 minutes, during a shift, but elected not to stop for all or part of that 10 minute entitlement; and
 - (iv) was paid for all the time taken as a rest pause (or in the case of the Award, a rest break).

Particulars

- (A) The pre-conditions entitling an employee to a rest pause are set out in:
- i. clauses 11.1 and 11.2 of the 2009 Agreement;
 - ii. clauses 11.1 and 11.2 of the 2010 Agreement;
 - iii. clauses 12.1 and 12.2 of the 2020 Agreement; and
 - iv. clauses 10.4.1 and 10.4.2 of the Collins Foods Agreement.

The pre-conditions entitling an employee to a rest break are set out in:

- v. clause 27.1 of the Award (as it existed prior to 28 July 2022); and
 - vi. clause 14.1 of the Award (as it has existed since 28 July 2022);
- (B) The timing requirements in respect of the entitlement to a rest pause are set out in:
- i. clauses 11.1 and 11.4 of the 2009 Agreement;
 - ii. clauses 11.1 and 11.4 of the 2010 Agreement; clauses 12.1 and 12.3 of the 2020 Agreement; and
 - iii. clauses 10.4.1, 10.4.2, 10.4.3 and 10.4.4 of the Collins Foods Agreement.

The timing requirements in respect of the entitlement to a rest break are set out in:

- iv. clauses 27.1(a), (b), (c), and (d) of the Award (as it existed prior to 28 July 2022); and
- v. clauses 14.1, 14.2, 14.4 and 14.5 of the Award (as it has existed since 28 July 2022);

The full text of each Industrial Instrument will be relied on at trial.

57. KFCPL refers to and repeats paragraph 56 and otherwise denies the allegations in paragraph 57.

C. KFCPL OPERATED RESTAURANT CONTRAVENTIONS

58. In response to paragraph 58, KFCPL says:
- (a) it admits paragraph 58 to the extent that the Group Members who were employed by KFCPL and who worked as team members in a KFCPL Operated Restaurant were entitled to rest pauses;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 58.

59. KFCPL denies the allegations in paragraph 59 and says that when Group Members employed by KFCPL worked a shift entitling the Group Member to a Rest Break, then the entitlement was discharged by one or more of the ways described at paragraph 56 above.
60. In response to paragraph 60, KFCPL:
- (a) refers to and repeats paragraph 59 above; and
 - (b) otherwise denies the allegations in paragraph 60.
61. KFCPL denies the allegations in paragraph 61 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by a Group Member.

D. FRANCHISEE CONTRAVENTIONS

RG Restaurants

62. In response to paragraph 62, KFCPL says:
- (a) it refers to and repeats sub-paragraphs 25(c) and 46(b) and paragraphs 1, 6, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 62.

63. KFCPL denies the allegations in paragraph 63 and says that when Mr Singh and Group Members employed by RG Restaurants worked a shift entitling Mr Singh or the Group Member to a Rest Break, then the entitlement was discharged by one or more of the ways described at paragraph 56 above.
64. In response to paragraph 64, KFCPL:
- (a) refers to and repeats paragraph 63 above; and
 - (b) otherwise denies the allegations in paragraph 64.
65. KFCPL denies the allegations in paragraph 65 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Mr Singh, Ms Bottiglieri and any Group Members who were employed by RG Restaurants.

Southern Restaurants

66. In response to paragraph 66, KFCPL says:
- (a) it refers to and repeats sub-paragraphs 25(c) and 46(c) and paragraphs 2, 5, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 66.

67. KFCPL denies the allegations in paragraph 67 and says that when Mr Kashap, Ms Fitzsimmons and Group Members employed by Southern Restaurants worked a shift entitling Mr Kashap, Ms Fitzsimmons or the Group Member to a Rest Break, then the entitlement was discharged in one or more of the ways described at paragraph 56 above.
68. In response to paragraph 68, KFCPL:
- (a) refers to and repeats paragraph 67 above; and
 - (b) otherwise denies the allegations in paragraph 68.
69. KFCPL denies the allegations in paragraph 69 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Mr Kashap, Ms Fitzsimmons and any Group Members who were employed by Southern Restaurants.

Collins Restaurants South

70. In response to paragraph 70, KFCPL says:
- (a) it refers to and repeats sub-paragraph 25(c) and 46(e) and paragraphs 4, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 70.

71. KFCPL denies the allegations in paragraph 71 and says that when Mr Westgarth and Group Members employed by Collins Restaurants South worked a shift entitling Mr Westgarth or the Group Member to a Rest Break, then the entitlement was discharged in one or more of the ways described at paragraph 56 above.
72. In response to paragraph 72, KFCPL:
- (a) refers to and repeats paragraph 71 above; and
 - (b) otherwise denies the allegations in paragraph 72.
73. KFCPL denies the allegations in paragraph 73 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Mr Westgarth and any Group Members who were employed by Collins Restaurants South.

Collins Restaurants Management

74. In response to paragraph 74, KFCPL says:
- (a) it refers to and repeats paragraphs 7, 11, 40, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 74.

75. KFCPL denies the allegations in paragraph 75 and says that when Ms Bennett-Naimo, Mr Cornford and Group Members employed by Collins Restaurants Management worked a shift entitling Ms Bennett-Naimo, Mr Cornford or the Group Member to a Rest Break, then the entitlement was discharged in one or more of the ways described at paragraph 56 above.
76. In response to paragraph 76, KFCPL:
- (a) refers to and repeats paragraph 75 above; and
 - (b) otherwise denies the allegations in paragraph 76.
77. KFCPL denies the allegations in paragraph 77 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Ms Bennett-Naimo, Mr Cornford and any Group Members who were employed by Collins Restaurants Management.

QSR

78. In response to paragraph 78, KFCPL says:
- (a) it refers to and repeats sub-paragraph 25(c) and 46(g) and paragraphs 8, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 78.

79. KFCPL denies the allegations in paragraph 79 and says that when Mr Bostanci and Group Members employed by QSR worked a shift entitling Mr Bostanci or the Group Member to a Rest Break, then the entitlement was discharged in one or more of the ways described at paragraph 56 above.
80. In response to paragraph 80, KFCPL:
- (a) refers to and repeats paragraph 79 above; and
 - (b) otherwise denies the allegations in paragraph 80.
81. KFCPL denies the allegations in paragraph 81 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Mr Bostanci and any Group Members who were employed by QSR.

Pansummit

82. In response to paragraph 82, KFCPL says:
- (a) it refers to and repeats sub-paragraph 25(c) and 46(h) and paragraphs 8, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 82.

83. KFCPL denies the allegations in paragraph 83 and says that when Mr Bostanci and Group Members employed by Pansummit worked a shift entitling Mr Bostanci or the Group Member to a Rest Break, then the entitlement was discharged in one or more of the ways described at paragraph 56 above.
84. In response to paragraph 84, KFCPL:
- (a) refers to and repeats paragraph 83 above; and
 - (b) otherwise denies the allegations in paragraph 84.
85. KFCPL denies the allegations in paragraph 85 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Mr Bostanci and any Group Members who were employed by Pansummit.

Collins Restaurants West

86. In response to paragraph 86, KFCPL says:
- (a) it refers to and repeats sub-paragraphs 25(c) and 46(f) and paragraphs 9, 49 and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 86.

87. KFCPL denies the allegations in paragraph 87 and says that when Mr Ward and Group Members employed by Collins Restaurants West worked a shift entitling Mr Ward or the Group Member to a Rest Break, then the entitlement was discharged in one or more of the ways described at paragraph 56 above.
88. In response to paragraph 88, KFCPL:
- (a) refers to and repeats paragraph 87 above; and
 - (b) otherwise denies the allegations in paragraph 88.
89. KFCPL denies the allegations in paragraph 89 and says further that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by Mr Ward and any Group Members who were employed by Collins Restaurants West.

All Other Franchisees

90. In response to paragraph 90, KFCPL says:
- (a) it refers to and repeats sub-paragraphs 25(c), 33(c), 40(b) and 46 and paragraphs 12, 49, and 56 above;
 - (b) the proper construction of the Industrial Instruments is as expressed in paragraph 56 above; and
 - (c) it otherwise denies the allegations in paragraph 90.

91. KFCPL denies the allegations in paragraph 91.
92. In response to paragraph 92, KFCPL:
- (a) refers to and repeats paragraph 90 above; and
 - (b) otherwise denies the allegations in paragraph 92.
93. KFCPL denies the allegations in paragraph 93 and further says that if (contrary to the foregoing) the Court concludes the Rest Break clauses were contravened, and it is appropriate to make an order for compensation (which is denied) then, in exercising the power to make an order under section 545 of the FW Act the Court should, in assessing any loss alleged, bring to account, set off or have regard to the value of any breaks received by any Group Members who were employed by the Respondents.
94. KFCPL denies the allegations in paragraph 94.

E. FRANCHISOR 558B CONTRAVENTIONS

The KFC System

95. In response to paragraph 95, KFCPL:
- (a) admits that the KFC business was operated using a system for the preparation, marketing and sale of food products known to KFCPL and Franchisees as the "System";
 - (b) says further that the KFC System is defined in the franchise agreements and in the Notification of Exclusive Dealing to the Australian Competition and Consumer Commission dated 11 September 2014; and

(c) otherwise denies the allegations in paragraph 95.

96. KFCPL admits paragraph 96.

Franchise Agreements

97. In response to paragraph 97, KFCPL:

- (a) says that during the Claim Periods most, but not all, franchise agreements had a minimum term of 10 years; and
- (b) otherwise admits paragraph 97.

98. In response to paragraph 98, KFCPL:

- (a) admits sub-paragraph 98(a), save that no licence is granted in relation to 'packaging';
- (b) admits sub-paragraph 98(b);
- (c) as to sub-paragraph 98(c), admits that KFCPL required Franchisees to pay continuing fees, advertising contributions and supply chain contributions and otherwise denies the allegation;
- (d) denies sub-paragraph 98(d) and says that the framework implemented by KFCPL for communication and training on workplace rights and conditions was not undertaken "pursuant to the Franchise Agreements" but was voluntarily implemented by KFCPL to assist Franchisees meet their obligations; and
- (e) admits sub-paragraph 98(e).

KFC Prescriptions and Supervision

99. In response to paragraph 99, KFCPL:

- (a) says that during the Claim Periods:
 - (i) some payment systems were mandated (for example, sales via a mobile phone application and sales via a kiosk) but others were not (for example, over-the-counter purchases in-store); and
 - (ii) Franchisees were required to use a nominated restaurant management system;

Particulars

Page 4 and 5 of the Notification of Exclusive Dealing submitted to the Australian Competition and Consumer Commission pursuant to subsection 93(1) of the *Competition and Consumer Act 2010* (Cth) and dated 11 September 2014.

- (b) admits sub-paragraph 99(b); and
- (c) otherwise denies the allegations in paragraph 99.

100. In response to paragraph 100, KFCPL:

- (a) says that the correct name of the separate advertising and marketing company is KFC Adco Limited and not KFC Adco Pty Ltd;
- (b) says, as to sub-paragraph 100(a), that KFC Adco Limited was managed by directors appointed by KFCPL and the Franchisees; and
- (c) otherwise admits the allegations in paragraph 100.

101. In response to paragraph 101, KFCPL:

- (a) admits sub-paragraph 101(a);

- (b) admits sub-paragraph 101(b);
- (c) denies the allegations in sub-paragraph 101(c) but says that during the Claim Periods KFCPL maintained an "Operations Council" comprised of representatives from Franchisees and KFCPL;
- (d) as to sub-paragraph 101(d), says that:
 - (i) the human resources council was called the "HR Council" until about 2019, when it was renamed the "People and Culture Council";
 - (ii) the People and Culture Council was a body comprising of representatives of KFCPL and Franchisees; and
 - (iii) otherwise denies the allegations in sub-paragraph 101(d);
- (e) admits sub-paragraph 101(e);
- (f) admits sub-paragraph 101(f) save that it ceased to exist in 2022;
- (g) admits sub-paragraph 101(g) save that it ceased to exist in 2021, at which point KFCPL maintained a Technology Panel comprised of representatives from Franchisees and KFCPL;
- (h) admits sub-paragraph 101(h) save that the business model working group came into existence in around 2019; and
- (i) says further that:
 - (i) steering committees were established in respect of certain system implementation projects including the Riteq and LIFELENZ implementation projects which comprised committee representatives from KFCPL and small, medium and large Franchisees; and

- (ii) the purpose of the committees was to consult with Franchisees in relation to the introduction and implementation of such systems, including configuration and testing.

102. KFCPL admits paragraph 102.

103. KFCPL admits paragraph 103 and says further that:

- (a) until around October 2019, Macromatix was the operations and inventory management software used in KFC Restaurants which included a time and attendance component;
- (b) Riteq was the time and attendance software used in KFC Restaurants between around October 2019 and 2022 (with the exact time of the transition depending on the particular KFC Restaurant in question);
- (c) LIFELENZ has been the workforce management software used in KFC Restaurants since around 2021 or 2022 (with the exact time of the transition depending on the particular KFC Restaurant in question);
- (d) the systems referred to in (a) to (c) above were used in conjunction with various other systems including payroll systems and non-electronic systems; and
- (e) all systems used by Franchisees were implemented at the expense of the Franchisees and after consultation with the Franchisees.

104. In response to paragraph 104, KFCPL:

- (a) refers to and repeats paragraph 103 above;

- (b) says that until around October 2019, Macromatix was the operations and inventory management software which included a time and attendance component, used in KFC Restaurants; and
- (c) otherwise denies the allegations in paragraph 104.
105. In response to paragraph 105, KFCPL:
- (a) refers to and repeats paragraph 103 above;
- (b) says that Riteq was the time and attendance software used in KFC Restaurants between around October 2019 and 2022 (with the exact time of the transition depending on the particular KFC Restaurant in question); and
- (c) otherwise denies the allegations in paragraph 105.
106. In response to paragraph 106, KFCPL:
- (a) refers to and repeats paragraph 103 above;
- (b) says that LIFELENZ has been the workforce management software used in KFC Restaurants since around 2021 or 2022 (with the exact time of the transition depending on the particular KFC Restaurant in question); and
- (c) otherwise denies the allegations in paragraph 106.
107. KFCPL denies the allegations in paragraph 107 and further says that KFCPL had systems, policies and procedures in place prior to February 2022 which included the provision of training and/or education that provided Franchisees and their staff with guidance in relation to Rest Break provisions.

Particulars

- (A) KFCPL provided and/or facilitated access to (including via independent third parties) coaching, training and education to

- its employees, Franchisees and their staff about workplace relations laws, including industrial instruments, via training materials and handbooks located on platforms such as the "Learning Zone" and "the Vault" and informed Franchisees via the Franchise Policies Manual, as varied from time to time.
- (B) KFCPL and Franchisees (save for Collins Restaurants NSW Pty Ltd, Collins Restaurants South Pty Ltd, Collins Restaurants West Pty Ltd and Collins Restaurants Queensland Pty Ltd) provided access to an employee hotline via Employee Relations Strategies (an independent third party workplace relations advisor) where information could be sought about workplace rights including the rest pause and/or rest break entitlement.
 - (C) KFCPL informed and provided regular communications to Franchisees about each Franchisee's obligations to comply with industrial instruments including via the Franchise Policies Manual, as varied from time to time, People & Culture and IR Spotlight updates and communications.
 - (D) KFCPL required Franchisees to sign statutory declarations confirming compliance with industrial instruments.
 - (E) Various time and attendance systems were made available to Franchisees and utilised by them to assist in ensuring rest pauses and rest breaks were rostered and taken including Macromatix, Riteq, and LIFELENZ and other systems including non-electronic systems.
 - (F) KFCPL required Franchisees to comply with all laws pursuant to the terms of the franchise agreements and the Franchise Policies Manual, as varied from time to time.
 - (G) Further particulars will be provided prior to trial.

Training and Audits

108. In response to paragraph 108, KFCPL:

- (a) admits paragraph 108 in respect of all Respondents save for the Twelfth to Fifteenth and Seventy-Fourth Respondents; and
- (b) otherwise denies the allegations in paragraph 108.

109. In response to paragraph 109, KFCPL:

- (a) says it usually (but not always) required Franchisees to complete management training in a KFC Restaurant before starting to operate a first franchise store and while this usually amounted to around 6 months, there was no minimum period of training time;
- (b) says it usually (but not always) required Franchisees to complete additional training before being permitted to operate multiple franchise stores but there was no minimum period of training time; and
- (c) otherwise denies the allegations in paragraph 109.

Particulars

- (A) Section 10.1(e) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 24 April 2018.
- (B) Section 10.1(e) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 24 April 2019.
- (C) Section 10.1(e) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 30 April 2020.
- (D) Section 10.1(e) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 28 April 2021.
- (E) Section 10.1(e) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 27 April 2022.
- (F) Section 10.1(e) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 26 April 2023.

110. In response to paragraph 110, KFCPL:

- (a) says that at all material times, it required Franchisees to use online platforms that housed training modules relating to (inter alia) the operation of KFC Restaurants;

- (b) between December 2017 and March 2022, the online platform was called the "Learning Zone";
- (c) since around March 2022, the online platform has been called "The Vault"; and
- (d) otherwise denies the allegations in paragraph 110.

Particulars

- (A) Section 10.1(d) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 28 April 2021.
- (B) Section 10.1(d) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 27 April 2022.
- (C) Section 10.1(d) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 26 April 2023.
- (D) Sections 1.4.1, 5.1 and 7.1 of the KFC SOPAC Franchise Policies Manual operative from 1 January 2015.
- (E) Sections 1.4.1, 5.1 and 8.1 of the KFC SOPAC Franchise Policies Manual operative from 1 September 2018.
- (F) Sections 1.4.1, 5.1 and 9.5 of the KFC SOPAC Franchise Policies Manual operative from 18 October 2021.

111. In response to paragraph 111, KFCPL:

- (a) says that until around June 2016, it operated an online recruitment site known as "e-Recruitment" and required Franchisees to use it to recruit employees below management-level for franchise stores;
- (b) says that since around June 2016, it operated an online recruitment site known as "Scout" and required Franchisees to use it to recruit employees below management-level for franchise stores;
- (c) says that at all material times:
 - (i) it did not require Franchisees to use "e-Recruitment" or "Scout" to recruit employees at management level; and

- (ii) Franchisees elected to use "e-Recruitment", "Scout" and other online recruitment sites to recruit employees at management level; and
- (d) otherwise denies the allegations in paragraph 111.

Particulars

- (A) Section 10.1(d) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 28 April 2021.
 - (B) Section 10.1(d) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 27 April 2022.
 - (C) Section 10.1(d) of the Kentucky Fried Chicken Disclosure Document for Franchisee or Prospective Franchisee and dated 26 April 2023.
112. KFCPL admits paragraph 112.
113. In response to paragraph 113, KFCPL:
- (a) denies sub-paragraph 113(a);
 - (b) admits sub-paragraph 113(b);
 - (c) admits sub-paragraph 113(c);
 - (d) admits sub-paragraph 113(d);
 - (e) says, as to sub-paragraph 113(e), that the Diploma of Retail Management ceased being offered by KFC RTO in around 2013 and otherwise admits sub-paragraph 113(e); and
 - (f) says that many, but not all, of the employees in KFC Restaurants were able to apply and participate in the KFC RTO training during the Claim Periods.

114. In response to paragraph 114, KFCPL:

- (a) says that the training provided by the KFC RTO aimed to educate participants on the retail industry generally as it was intended to provide an accreditation to employees that could be used across the retail sector;
- (b) says that:
 - (i) the KFC RTO provided training to employees undertaking a traineeship via the KFC Training Pathway regarding compliance with employment laws and industrial instruments; and
 - (ii) in addition, KFCPL and Franchisees provided training to employees regarding the terms of applicable industrial instruments, including rest pause and rest break entitlements, as part of the KFC onboarding process; and
- (c) otherwise denies the allegations in paragraph 114.

115. In response to paragraph 115, KFCPL:

- (a) says that:
 - (i) it engaged third parties to audit Franchisees from time to time;
 - (ii) every Franchisee was audited at least once per year;
 - (iii) the triggers for an audit varied throughout the Claim Periods; and
 - (iv) not all KFC “brand standards” were audited; and
- (b) otherwise denies the allegations in paragraph 115.

116. In response to paragraph 116, KFCPL:

- (a) admits sub-paragraph 116(a); and
- (b) otherwise denies the allegations in paragraph 116.

Characteristics of the Employees

117. In response to paragraph 117, KFCPL:

- (a) admits the majority of the employees in KFCPL Operated Restaurants were at all material times aged between 16 and 24 years of age; and
- (b) does not know and therefore cannot admit the ages of employees employed in franchise stores.

118. In response to paragraph 118, KFCPL:

- (a) says that at the relevant time in 2019 when the KFC 2019 Youth Confidence Report was prepared, around 90% of employees in KFCPL Operated Restaurants were aged between 16 and 24 years;
- (b) says that the KFC 2019 Youth Confidence Report contains statistics that are the same or similar to those alleged in sub-paragraphs 118(a) to (d) of the Claim but that they are subject to statistical limitations which mean they are not necessarily representative of all "young Australians"; and

Particulars

The KFC 2019 Youth Confidence Report was not a survey of all "young Australians" and instead used statistical sampling and extrapolation. For example, it was based on the views of 745 employees of KFC stores (of a 35,000 employee population pool) and 1,000 non-employees of the KFC network and then extrapolated to "all young Australians".

- (c) otherwise denies the allegations in paragraph 118.

119. KFCPL admits paragraph 119.

120. KFCPL denies the allegations in paragraph 120 and says further:

- (a) young employees can be expected to understand their rights given the current digital age where much of this information exists and is easily accessible;
- (b) young employees can be expected to, and do, voice concerns or grievances especially when their direct supervisors and managers are of a similar age;
- (c) young employees can be expected to, and do, voice concerns or grievances given encouragement for youth participation from recent activist movements relating to social and political issues;
- (d) KFCPL and Franchisees provided information to employees about their workplace rights including: rest pauses and rest breaks via policies accessible online, online and in-store access to industrial instruments, employment agreements, and employee hotline posters displayed in all stores;
- (e) KFCPL and Franchisees, save for Collins Restaurants NSW Pty Ltd, Collins Restaurants South Pty Ltd, Collins Restaurants West Pty Ltd and Collins Restaurants Queensland Pty Ltd (**Collins Parties**), provided access to an employee hotline via Employee Relations Strategies (an independent third party workplace relations advisor) where information could be sought about workplace rights including the rest pause and/or rest break entitlement;

Particulars

The Collins Parties did not engage Employee Relations Strategies.

- (f) KFCPL and Franchisees provided employees with avenues (and education about such avenues) through which employees could provide feedback, ask questions and communicate issues, disputes or grievances about workplace rights, including: the Open Door Policy, the Voice survey, the Wellbeing Outfit, posters displayed

in all stores about how employees can access an employee hotline, and an internal incident reporting mechanism;

Particulars

- (A) Open Door Policy.
 - (B) Voice survey.
 - (C) Wellbeing Outfit.
 - (D) Posters displayed in KFC Restaurants about how employees can access an employee hotline.
 - (E) An internal incident reporting mechanism.
 - (F) Further particulars will be provided prior to trial.
- (g) Employees were able to communicate with the Shop, Distributive and Allied Employees' Association (**SDA**) and the Retail and Fast Food Workers Union (**RAFFWU**) and seek information about their workplace rights and, via the SDA and the RAFFWU, raise issues, disputes and grievances about workplace rights with the relevant employers; and

Particulars

- (A) The SDA could be contacted via its officers, organisers, delegates, and the contact details found on its website at URL: <https://www.sda.org.au/contact-us/>.
 - (B) The RAFFWU could be contacted via its officers, organisers, delegates, and the contact details found on its website at URL: <https://raffwu.org.au/contact/>.
 - (C) The SDA and RAFFWU were, at all material times, bodies whose objects were to act in the interests of members which included advocating on behalf of members by raising formal and informal complaints and disputes if members were being denied workplace rights.
- (h) the KFC Agreement 2009, KFC Agreement 2010, KFC Agreement 2020, Collins Foods Agreement and the Award each included a dispute resolution provision which allowed employees to raise grievances or disputes at the workplace level

and, if unresolved at the workplace level, to have them conciliated and arbitrated at the Fair Work Commission.

Particulars

- (A) Clause 30 of the KFC Agreement 2009.
- (B) Clause 30 of the KFC Agreement 2010.
- (C) Clause 32 of the KFC Agreement 2020.
- (D) Clause 6.1 of the Collins Foods Agreement.
- (E) Clause 9 of the Award (up to 27 July 2022) and clause 30 of the Award (from 28 July 2022).

Relationship between KFCPL and Franchisees

121. In response to paragraph 121, KFCPL:
- (a) denies the allegations in paragraph 121 insofar as they allege the Twelfth Respondent or the Fiftieth Respondent is or was a franchisee of KFCPL;
 - (b) refers to and repeats paragraph 16 above; and
 - (c) otherwise admits paragraph 121.
122. KFCPL admits paragraph 122.
123. In response to paragraph 123, KFCPL:
- (a) refers to and repeats sub-paragraphs 16 and 121(b) above;
 - (b) admits paragraph 123 only insofar as there existed a franchise agreement with a given entity during the Claim Periods; and
 - (c) otherwise denies the allegations in paragraph 123.

Franchisor Contraventions

124. KFCPL denies the allegations in paragraph 124.

125. KFCPL refers to and repeats paragraph 107 above and otherwise denies the allegations in paragraph 125.
126. KFCPL denies the allegations in paragraph 126.
127. In response to paragraph 127, KFCPL:
- (a) refers to and repeats paragraph 56 above;
 - (b) denies the allegations in paragraph 127;
 - (c) and says further and in the alternative that if any of the Franchisee Contraventions occurred (which is denied) then KFCPL took reasonable steps to prevent a contravention by the Franchisees of the same or a similar character.

Particulars

- (A) KFCPL provided and/or facilitated access to (including via independent third parties) coaching, training and education to Franchisees and their staff about workplace relations laws, including industrial instruments, via training materials and handbooks located on platforms such as the "Learning Zone" and "the Vault" and informed Franchisees via the Franchise Policies Manual, as varied from time to time.
- (B) KFCPL required Franchisees to employ sufficient employees (both management employees and team members) to meet the needs of the business, customers and staff at outlets with regard to outlet type and peak sales periods and informed Franchisees of this requirement via the Franchise Policies Manual, as varied from time to time.
- (C) KFCPL informed and provided regular communications to Franchisees about each Franchisee's obligations to comply with industrial instruments including via the Franchise Policies Manual, as varied from time to time, People & Culture and IR Spotlight updates and communications.
- (D) KFCPL engaged an independent third party provider, ER Strategies, to respond to complaints or queries of any employee of a Franchisee and to conduct audits.

- (E) KFCPL required Franchisees to sign statutory declarations confirming compliance with industrial instruments.
- (F) Various time and attendance systems were made available to Franchisees and utilised by them to assist in ensuring rest pauses and rest breaks were rostered and taken including Macromatix, Riteq, and LIFELENZ and other systems including non-electronic systems.
- (G) KFCPL required Franchisees to comply with all laws pursuant to the terms of the franchise agreements and the Franchise Policies Manual, as varied from time to time.
- (H) Further particulars will be provided prior to trial.

128. KFCPL denies the allegations in paragraph 128 and says further and in the alternative that if any of the Franchisees contravened the Industrial Instruments (which is denied) then KFCPL took reasonable steps to prevent a contravention by the Franchisees of the same or a similar character.

Particulars

- (A) KFCPL provided and/or facilitated access to (including via independent third parties) coaching, training and education to the Franchisees and their staff about workplace relations laws including industrial instruments, via training materials and handbooks located on platforms such as the "Learning Zone" and "the Vault" and informed Franchisees via the Franchise Policies Manual, as varied from time to time.
- (B) KFCPL required Franchisees to employ sufficient employees (both management employees and team members) to meet the needs of the business, customers and staff at outlets with regard to outlet type and peak sales periods and informed Franchisees of this requirement via the Franchise Policies Manual, as varied from time to time.
- (C) KFCPL informed and provided regular communications about each Franchisee's obligations to comply with industrial instruments including via the Franchise Policies Manual, as varied from time to time, People & Culture and IR Spotlight updates and communications.

- (D) KFCPL engaged an independent third party provider, ER Strategies, to respond to complaints or queries of any employee of a Franchisee and to conduct audits.
- (E) KFCPL required Franchisees to sign statutory declarations confirming compliance with industrial instruments.
- (F) Various time and attendance systems were made available to Franchisees and utilised by them to assist in ensuring rest pauses and rest breaks were rostered and taken including Macromatix, Riteq, and LIFELENZ and other systems including non-electronic systems.
- (G) KFCPL required Franchisees to comply with all laws pursuant to the terms of the franchise agreements and the Franchise Policies Manual, as varied from time to time.
- (H) Further particulars will be provided prior to trial.

129. KFCPL denies the allegations in paragraph 129 and reserves its rights, if any contraventions have occurred (which is denied) and the Court exercises the power to make an order under section 545 of the FW Act, to rely on any delay on the part of the SDA in bringing this proceeding.

Particulars

Further particulars will be provided after discovery.

F. RELIEF

130. KFCPL denies the allegations in paragraph 130 and reserves its rights, that if any loss has been suffered because of the contraventions (which is denied) and the Court exercises the power to make an order under section 545 of the FW Act, to rely on any delay on the part of the SDA in bringing this proceeding.

Particulars

Further particulars will be provided after discovery.

This pleading was settled by Wendy Harris KC and Alex Manos of counsel.

Date: ~~21 June 2024~~ 23 August 2024

A handwritten signature in blue ink, appearing to read "D. McCredie". The signature is written in a cursive style with a large initial "D" and a horizontal line extending to the right.

Signed by David McCredie

Lawyer for the First Respondent

Certificate of lawyer

I David McCredie certify to the Court that, in relation to the defence filed on behalf of the Respondent, 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: ~~21 June 2024~~ 23 August 2024



Signed by David McCredie

Lawyer for the First Respondent