



**IN THE FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT MELBOURNE**

File No: MLG2486/2019

ISILELI "ISRAEL" FOLAU
Applicant

RUGBY AUSTRALIA LIMITED
First Respondent

WARATAHS RUGBY PTY LTD
Second Respondent

ORDER

BEFORE: REGISTRAR LUXTON
DATE: 27 November 2019
MADE AT: MELBOURNE

THE COURT ORDERS THAT:

Declaration

1. A declaration pursuant to sub-s 45(1) of the *Federal Circuit Court of Australia Act 1999* that discovery is, in the interests of the administration of justice, appropriate.

Disclosure by First Respondent

2. Pursuant to r 14.02(2), the First Respondent disclose the documents within its control falling within the categories described in the Disclosure Categories attached to these orders.
3. By 4.00 pm on 29 November 2019, in respect of Disclosure Category 1, the First Respondent is to provide discovery of a tranche of documents and allow the Applicant to inspect each document disclosed and within its control in this tranche (with the exception of any documents in respect of which privilege is claimed) by providing the Applicant with a copy of the document.



4. By 4.00 pm on 6 December 2019, in respect of Disclosure Category 1, the First Respondent is to provide discovery of any remaining documents and allow the Applicant to inspect each further document disclosed and within its control (with the exception of any documents in respect of which privilege is claimed) by providing the Applicant with a copy of the document.
5. By 4.00 pm on 6 December 2019, in respect of Disclosure Category 1, the First Respondent file and serve an affidavit of documents, as required by r 14.03.
6. By 4.00 pm on 13 December 2019, in respect of Disclosure Categories 2 to 11 (inclusive), and Disclosure Categories 13 and 14, the First Respondent file and serve an affidavit of documents, as required by r 14.03.
7. By 4.00 pm on 13 December 2019, in respect of Disclosure Categories 2 to 11 (inclusive), and Disclosure Categories 13 and 14, the First Respondent allow the Applicant to inspect each document disclosed and within its control (with the exception of any documents in respect of which privilege is claimed) by providing the Applicant with a copy of the document.

Disclosure by Second Respondent

8. Pursuant to r 14.02(2), the Second Respondent disclose the documents within its control falling within the categories described in the Disclosure Categories 2 to 11 (inclusive).
9. By 4.00 pm on 13 December 2019, in respect of that disclosure, the Second Respondent file and serve an affidavit of documents, as required by r 14.03.
10. By 4.00 pm on 13 December 2019, the Second Respondent allow the Applicant to inspect each document disclosed and within its control (with the exception of any documents in respect of which privilege is claimed) by providing the Applicant with a copy of the document.
11. In respect of Disclosure Categories 2, 3, 4, 7, 8, 13 and 14, it will be sufficient for the Respondents to limit their searches in the following manner:



- (a) the Respondents are only required to search electronically stored email communications;
- (b) the Respondents are only required to search communications where at least one party to the communication is at the level of General Manager Commercial Partnerships or above (in the case of the First Respondent) or General Manager Commercial (in the case of the Second Respondent);
- (c) the Respondents are not required to search email files held by board members of either Respondent who do not maintain an email address with the respective Respondent.

Disclosure by the Applicant

- 12. Pursuant to r 14.02(2), the Applicant disclose the documents within his possession, custody or control falling within the categories described in the Disclosure Categories 13 to 17 (inclusive).
- 13. By 4.00 pm on 29 November 2019, in respect of Disclosure Categories 15 to 17 (inclusive), the Applicant is to provide discovery of a tranche of documents and allow the Respondents to inspect each document disclosed and within its control in this tranche (with the exception of any documents in respect of which privilege is claimed) by providing the Respondents with a copy of the document.
- 14. By 4.00 pm on 13 December 2019, the Applicant is to provide discovery of any remaining documents and allow the Respondents to inspect each further document disclosed and within its control (with the exception of any documents in respect of which privilege is claimed) by providing the Respondents with a copy of the document.
- 15. By 4.00 pm on 13 December 2019, in respect of that disclosure, the Applicant file and serve an affidavit of documents, as required by r 14.03.



Confidentiality Undertaking

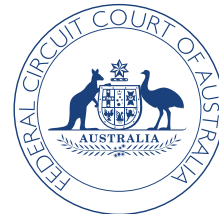
16. The obligation on the Respondents to allow inspection of documents falling within Categories 1, 10 and 11 by providing a copy of those documents to the Applicant is subject to the provision by the Applicant to the Respondents of a confidentiality undertaking in the form annexed to these orders by each legal representative of the Applicant who is proposed to have access to the documents produced.

By the Court

DATE ENTERED: 27 November 2019

A handwritten signature in blue ink, consisting of a large, stylized loop with a small arrow-like stroke at the end.

Registrar



Disclosure Categories

For the purpose of these categories:

- (a) **Experienced Player** means any player who, during the course of their career, did all of the following:
 - (i) appeared (either starting or as a substitute) for the Wallabies at least 25 times; and
 - (ii) entered into a contract (or a renewal of his contract) with the First Respondent on or after his 30th birthday; and
 - (iii) entered into a contract (or a renewal of his contract) with the First Respondent in or after the year 2004.
- (b) **Contract Schedule** means the part of a contract between the player and the First Respondent that records, among other things, the player's name, the contract term, the contract remuneration, and any other special terms (that is, terms beyond the standard terms set by the prevailing collective agreement).

Disclosure by the First Respondent

1. In respect of each Experienced Player, a copy of:
 - (a) the Contract Schedule to each contract entered into when or after the player was aged 30; and
 - (b) the Contract Schedule to the last contract entered into before the player was aged 30.

Disclosure by the First and / or Second Respondents

2. All documents evidencing or otherwise recording any communications on 9, 10 or 11 April 2019:



- (a) between anyone on behalf of the First Respondent and anyone on behalf of the Second Respondent,

relating to the decision to issue the joint statement pleaded in paragraph 24 of the Amended Statement of Claim (**ASOC**).

- 3. All documents evidencing or otherwise recording any communications on 9, 10, 11 or 12 April 2019:

- (a) between anyone on behalf of the First Respondent and anyone on behalf of the Second Respondent,

relating to the decision to issue the joint statement pleaded in paragraph 25 of the ASOC.

- 4. All documents evidencing or otherwise recording any communications in the period 9 to 15 April 2019 (inclusive):

- (a) between anyone on behalf of the First Respondent and anyone on behalf of the Second Respondent,

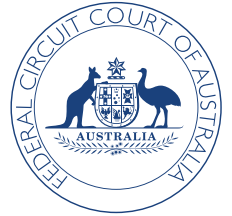
relating to the decision to issue the Breach Notice pleaded in paragraph 26 of the ASOC.

- 5. [not used]

- 6. [not used]

- 7. All documents evidencing or otherwise recording any communications in the period 15 May 2019 to 24 May 2019 (inclusive):

- (a) between anyone on behalf of the First Respondent and anyone on behalf of the Second Respondent,



relating to the decision to issue the termination letter pleaded in paragraph 31 of the ASOC.

8. All documents evidencing or otherwise recording any communications in the period 15 May 2019 to 24 May 2019 (inclusive):
 - (a) between anyone on behalf of the First Respondent and anyone on behalf of the Second Respondent,

relating to the decision to issue the termination letter pleaded in paragraph 32 of the ASOC.

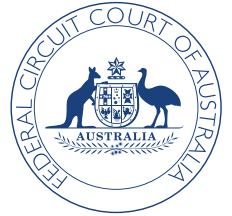
9. [not used]
10. A copy of any contract between the First Respondent and any commercial partner or sponsor (however described) which contract was in term at any time on or after 1 April 2018.
11. All documents evidencing or otherwise recording any communications between anyone on behalf of any commercial partner or sponsor (however described) and any member of the First Respondent's management relating to any public comment or social media post made by the Applicant on or after 1 April 2018 (including the 2018 Post and the 2019 Posts).
12. For the purpose of paragraph 11, the First Respondent's management is limited to its General Manager Commercial Partnerships and any other person with a position at that level or higher (including its Chief Executive Officer and each member of its Board).

Disclosure by the Applicant and the Respondents

13. All documents evidencing or otherwise recording any communications between any one or more of the following:
 - (a) the Applicant;
 - (b) the Applicant's Agent,



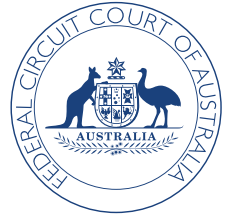
- (c) the First Respondent, and
 - (d) the Second Respondent,
concerning or relating to one or more of the following:
 - (e) the Instagram post uploaded by Israel Folau on 4 April 2018 (**2018 Post**);
 - (f) use of social media platforms by the Applicant;
 - (g) the renegotiation of the player contract entered into between the Applicant and the Respondents in October 2018 (**Player Contract**);
 - (h) the ‘early release’ clause which appears in the Player Contract; and
 - (i) the Twitter and Instagram posts uploaded by Israel Folau on 10 April 2019 (**2019 Posts**).
14. All documents evidencing or otherwise recording any communications between any one or more of the following:
- (a) the Applicant;
 - (b) the Applicant’s Agent,
 - (c) the First Respondent, and
 - (d) the Second Respondent,
concerning or relating to one or more of the following:
 - (e) a meeting on or about 10 April 2018 between Raelene Castle, Andrew Hore, Isaac Moses and the Applicant;
 - (f) a meeting on or about 3 May 2018 between Raelene Castle, Andrew Hore, Isaac Moses and the Applicant;
 - (g) a meeting on or about 17 October 2018 between Raelene Castle and Isaac Moses;



- (h) a meeting on or about 21 November 2018 between Raelene Castle and the Applicant which took place at the Lensbury Hotel; and
- (i) a meeting on or about 12 April 2019 between Raelene Castle, Andrew Hore, Prataal Raj, the Applicant Israel Folau and legal counsel for the Respondents.

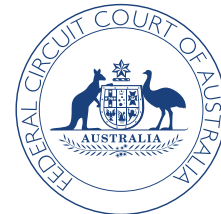
Disclosure by the Applicant

- 15. All Documents evidencing or otherwise recording any communications concerning:
 - (a) any domestic and/or international playing opportunities offered to the Applicant in Rugby Union or any other sporting codes between 1 April 2019 and the date of this order;
 - (b) any other paid offers (either prospective or actual) of employment or performance of services (in any capacity) made to the Applicant between 1 April 2019 and the date of this order; and
 - (c) any steps taken by the Applicant to secure any such opportunity or offer referred to at 15(a) or 15(b).
- 16. All Documents evidencing or otherwise recording any communications with any person or entity relating to sponsorship arrangements or opportunities for the Applicant between 1 April 2018 and the date of this order.
- 17. All Documents recording or evidencing communications exchanged between one or more of:
 - (a) the Applicant;
 - (b) the Applicant's Agent; and
 - (c) the Tongan National Rugby League (and its officers, representatives or employees),



concerning the Applicant's playing international rugby league for Tonga between 1 April 2019 and the date of this order.

18. For the purposes of these orders, 'Applicant's Agent' means Mr Isaac Moses, IJM Group Pty Ltd t/as Cove Agency and any other person or entity for or on behalf of the Applicant (other than a person or entity acting as a legal representative of the Applicant).



Confidentiality undertaking – legal representatives of Isileli “Israel” Folau

By _____ (*insert name*) of Macpherson Kelley/Counsel.

I, _____ (*insert name*), undertake to the First and Second Respondents in the Federal Circuit Court of Australia (**Court**) proceedings MLG2486 of 2019 (**Proceedings**) that:

- (1) Subject to paragraph (2) below, I will keep the documents listed in Schedule 1 to this undertaking (the **Confidential Documents**) and the contents of the Confidential Documents (**Confidential Information**) confidential at all times, and will not disclose them or any part of them to any other person.
- (2) Notwithstanding anything else in this undertaking, I may disclose a Confidential Document or Confidential Information:
 - (a) to other legal representatives of the Applicant in the Proceedings who have also signed an undertaking to the First and Second Respondents in the Proceedings in substantively identical terms to this confidentiality undertaking;
 - (b) to the Applicant in these Proceedings in so far as the Confidential Document or Confidential Information is accessed only by the Applicant at the premises of the Applicant's legal representatives at Level 7, 600 Bourke Street Melbourne, Victoria 3000. For the avoidance of doubt, under no circumstance is the Applicant permitted to otherwise view or retain or otherwise deal with the Confidential Documents or the Confidential Information other than as contemplated in this undertaking;
 - (c) to the extent that I am authorised by an order of the Court to do so; or
 - (d) to the extent that I am authorised in writing by the First and Second Respondents to do so.
- (3) I will not use the Confidential Documents or Confidential Information or any part of them other than for the purposes of the Proceedings or any appeal therefrom.
- (4) Once the Proceedings have been determined or otherwise resolved (including any appeals), I will destroy any copies of the Confidential Documents in my possession, and any documents recording Confidential Information in my possession, if requested to do so in writing by the solicitors for the Respondents.

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Executed by:

Date:

Schedule

1. Each document in Disclosure Category 1 provided by the First Respondent pursuant to the orders of Registrar Luxton dated 27 November 2019.
2. Each document in Disclosure Category 10 provided by the First Respondent pursuant to the orders of Registrar Luxton dated 27 November 2019.
3. Each document in Disclosure Category 11 provided by the First Respondent pursuant to the orders of Registrar Luxton dated 27 November 2019.