

2 September 2015

Nick Stretch Legal
Suite 802
530 Little Collins Street
MELBOURNE VIC 3000

Partner Sylvia Fernandez
Direct Line (02) 8083 0408
Email sylvia.fernandez@holdingredlich.com
Our Ref SZF 14680036

By email

Dear Mr Stretch

Letter of demand for the removal of defamatory material from 'Unhappy Franchisee' blog

It has been brought to our clients' attention that one or more of Armstrong Consulting Pty Ltd (AC), Kenneth Armstrong or Amanda Kelly may have been involved in the publication of an article entitled 'ERA EXPENSE REDUCTION ANALYSTS Franchise Fraud Allegations' on the blog named 'Unhappy Franchisee' (**Blog**) located at 'www.unhappyfranchisee.com/era-expetnse-reduction-analysts-franchise-fraud-allegations' (sic) (**Article**).

We have sent a copy of this letter directly to Ms Kelly. If you have instructions to act for Ms Kelly in relation to the matters which follow, we request your prompt confirmation.

The Article and its enclosures

1. The Article suggests that one or more of AC, Mr Armstrong or Ms Kelly has made, amongst others, the following statements:
 - (a) *"the owners of this ERA business, Messrs Marfleet and Howson have more moves than a bucket of worms and are expert at using the Insolvency Acts to pass off the assets of their insolvent businesses to defraud creditors who are usually successful ex-franchisee or ex-employees who have successfully litigated against ERA..."*;
 - (b) *"not surprising the only ERAIL Creditor who got paid in January 2011 was Mr. Marfleet after he sold the ERA global business to himself (Montgomery Investment Co SA) for GBP 363,000 then from the proceeds of the sale paid GPB 313,000 to himself in full payment of his alleged secured debt and GPB50,000 to the ERAIL Administrators who stated that the value of the USA subsidiary, the UK Master Licence as a part of the ERA European business (ERAGM) and the Australian / NZ business was NIL..."*; and
 - (c) *"to understand the extent of the fraud perpetrated on all ERA franchisees simply refer to the USA Franchisee Disclosure Document (FDD) dated 11 March 2011 (and 2011, 2012 and 2013 FDD) and lodged under affidavit with the California Department of Corporations which showed the net "audited on 4 March 2011" assets were approximately USD\$5M not NIL!!!!!!!!!! ... Yet back in the Motherland (UK) in exactly the same month (March 2011) the*

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Level 65 MLC Centre 19 Martin Place Sydney NSW 2000 DX 529 Sydney
GPO Box 4118 Sydney NSW 2001 T +61 2 8083 0388 www.holdingredlich.com

ABN 15 364 527 724

ERA International directors had told the ERAIL Administrators that as at 31 December 2010 the ERA USA subsidiary was insolvent and not worth one cent – not one cent! This is a clear and deliberate fraud perpetrated on the USA authorities and on all ERA USA and global franchisees and involved highly professional organisations such as Leonard Curtis (UK), Hinzman and Associates (USA), Kreston Dormer (Aust.) and Baker Tilley (UK). The extent of the fraud is incomprehensible and yet as stated by your website ERA and its owners are still “free to pillage future victims”...”.

2. The Article also contains links to the following documents:
 - (a) Administrators’ Report to Creditors regarding ERA Insurance Services Pty Limited dated 3 August 2010;
 - (b) Expense Reduction Analysts, Inc Franchise Disclosure Document dated 21 March 2011;
 - (c) Administrators’ Report regarding Expense Reduction Analysts International Limited dated 18 March 2011;
 - (d) Joint Administrators’ Report regarding ERA Global Management dated 7 January 2012; and
 - (e) a document entitled ‘AFFIDAVIT Expense Reduction Analysts, Inc. from ERA Franchise Disclosure Document’, which purports to annotate an affidavit purportedly given by Kenneth Hagerstrom in connection with the franchise disclosure document referred to in paragraph 2(b) above (**Annotation Document**).
3. It is apparent from the Annotation Document that one or more of AC, Mr Armstrong or Ms Kelly has further stated:
 - (a) *“This statement proves that ERAI Joint Administrators’ valuation on 18 March 2011 of ERAI’s USA subsidiary, ERA, Inc. was a fraud with the intention to assist Messrs Marfleet, Howson and Clucas defraud the creditors and minority shareholders of ERAI and ERAGICS Limited.”;*
 - (b) *“Whereas the ERA Inc Directors, who are also ERAI directors and the ERAI financial controller, Messrs Hagerstrom and Clucas, under affidavit provide on 11 March 2011 consolidated accounts of ERA Inc to numerous USA State Government, under affidavit, accounts audited on 4 March 2011 stating that the Intangible Assets of ERA Inc of \$4,060,000 have not been impaired at all and that the total assets of ERA Inc as at 31 December 2010 as worth USD\$5.364m.”;*
 - (c) *“As further proof that Messrs Titley and Poxan as well as the directors of ERAI and ERAGICS - Messrs Chapman, Marfleet, Clucas, Hagerstrom and Howson and Champion Chartered Accountants deliberately defrauded the creditors and minority shareholders of ERAI and ERAGICS on 24 January and 18 March 2011 refer to the ERA Inc Disclosure Documents lodged with the USA State Governments in April 2014.”; and*
 - (d) *“To cover up this fraud it is critical that the ERAI and ERAGICS directors who are also the defendant directors appoint Messrs Poxan and Titley to liquidate ERAI and ERAGICS and that there is no investigation by an independent liquidator or liquidator appointed by the legitimate creditors and or minority shareholders.”*
4. The Article and the Annotation Document have been published on the Blog since 18 August 2015 and remain displayed at the date of this letter. The Article and the Annotation Document are accessible to any person with access to the Internet.

5. Furthermore, the document properties of the Annotation Document record that it was created by 'AMANDA' on 1 November 2014. Our clients have reason to believe the reference to 'AMANDA' is a reference to Mr Armstrong's daughter, Amanda Kelly, which would tend to indicate that either Ms Kelly was involved in authoring the Annotation Document or her computer was accessed by another for this purpose.
6. Similarly, the publication of the Article follows only five days after the plaintiffs' expert evidence in reply was served. In common with the third expert report of John-Temple Cole and the documents to which Mr Temple-Cole had regard, the Article and the documents linked to it, pass comment on matters such as:
 - (a) the administration of ERA Insurance Services Pty Ltd;
 - (b) the administration of ERAGICS Ltd; and
 - (c) the administration of Expense Reduction Analysts International Ltd.
7. In light of these coincidences, our clients also have reason to believe that Mr Armstrong may have been involved in the authoring and publication of the Article.

Defamation and injurious falsehood

8. Having regard to the content of the Article and the documents linked to it, it is clear (and it would be clear to the ordinary recipient of the Article and the documents linked to it) that the Article and the Annotation Document refers to and identifies the following organisations and persons as its subjects:
 - (a) the businesses operated and formerly operated by the ERA group of companies, including:
 - (i) ERA Insurance Services Pty Ltd;
 - (ii) Expense Reduction Analysts, Inc;
 - (iii) Expense Reduction Analysts International Limited;
 - (iv) ERAGICS Limited; and
 - (v) ERA Global Management Limited; and
 - (b) particular officers and former officers of these companies, including:
 - (i) Mr Charles Frederick Marfleet;
 - (ii) Mr Charles Howson;
 - (iii) Mr Ronald Clucas;
 - (iv) Mr Kenneth Hagerstrom; and
 - (v) Mr Keith Chapman.
9. Given that the persons referred to in paragraph 8(b) above are clearly identifiable as the subjects of the statements set out in paragraphs 1 and 3 above, the statements are defamatory, in that they are likely to lead an ordinary reasonable person to think less of them.
10. In particular, the statements convey at least the following defamatory imputations about these persons:

- (a) that they have acted fraudulently;
 - (b) that they have caused the companies they direct to act fraudulently;
 - (c) that they have preferred their interests over other creditors and the minority shareholders of the companies they direct;
 - (d) that they have perjured themselves or sworn false affidavits; and
 - (e) that they have sought to conceal the fraudulent conduct they are accused of having carried out.
11. Similarly, given that the ERA entities are explicitly named in the statements set out in paragraphs 1 and 3 above, the statements convey at least the following false imputations about the business practises of these entities:
- (a) that they have acted fraudulently;
 - (b) that they have preferred the interests of certain creditors over others; and
 - (c) that they have sought to conceal fraudulent conduct they are accused of having carried out.
12. We are instructed that the imputations set out in paragraphs 10 and 11 above have no foundation in truth.
13. Having regard to the seriousness of the imputations set out in paragraphs 10 and 11 above, it can only be inferred that the statements were made deliberately so as to cause harm to the reputations of the persons and the businesses to which they were directed.
14. Accordingly, we regard the publication of the Article and the Annotation Document actionable in defamation and injurious falsehood for the individuals and corporations respectively targeted by the published matter.

Interference with these proceedings

15. The Article suggests that one or more of AC, Mr Armstrong or Ms Kelly has further stated:

"It would be an easy thing for the "700" franchisees to bring a class action against the ERA shareholders and directors for misrepresentation, fraud and deceptive and misleading conduct based on the attached documents alone.

We have all the necessary proof and we would be willing to assist any and all ERA franchisees and ex-franchisees at any time for nil reward other than to see them stopped."

16. If, as it appears, one or more of AC, Mr Armstrong or Ms Kelly is responsible for the publication of the Article, as plaintiffs (or in the case of Ms Kelly, the daughter of a plaintiff) in proceedings in the Supreme Court of New South Wales against a number of the persons and entities listed in paragraph 8 above, neither AC, Mr Armstrong nor Ms Kelly could have any justification or legitimate interest in assisting any other party to bring separate proceedings against these persons or entities in respect of the same subject matter which is currently the subject of the proceedings currently before the Supreme Court, other than to interfere with the judicial process.

Loss and harm

17. The individuals referred to in paragraph 8(b) above have suffered and will continue to suffer harm to their personal and business reputations as a result of the defamatory imputations conveyed in

the Article and the Annotation Document to which reference is made in paragraph 10 above so long as they remain publicly accessible and uncontroverted by a retraction from the person responsible for their publication.

18. Similarly, the ERA entities referred to in paragraph 8(a) above have suffered and will continue to suffer loss and harm to their commercial reputation and interests as a result of the malicious falsehoods conveyed in the Article and the Annotation Document to which reference is made in paragraph 12 above so long as they remain publicly accessible and uncontroverted by a retraction from the person responsible for their publication. Such loss and harm could, by way of example, manifest in current and prospective franchisees of the ERA group declining to participate in the ERA franchise and in the clients of ERA franchisees declining to further engage the consulting services of the ERA group.

Demand

19. If, as it appears, one or more of AC, Mr Armstrong or Ms Kelly is responsible for the publication of the Article and the Annotation Document, we are instructed to demand:
- (a) that they procure the Article and the documents referred to in paragraph 2 above to be removed from the Blog; and
 - (b) that they, as well as Armstrong Strategic Management & Marketing Pty Ltd:
 - (i) deliver to our offices signed originals of the **enclosed** undertaking; and
 - (ii) issue a retraction of the Article and the Annotation Document on the Blog in words to the following effect:

"On 18 August 2015, Armstrong Consulting Pty Ltd submitted an article on this blog which contained a series of untrue and unsubstantiated allegations against the Expense Reduction Analysts franchise network. With apologies, it unreservedly withdraws the article and the allegations it made."

20. Our clients require compliance with the demands in paragraph 19 above on or before **5pm on Friday, 4 September 2015**.
21. Our clients' rights are strictly reserved, including their rights to raise the matters addressed in this letter with the Commercial List Judge.
22. If litigation ensues in relation to matters the subject of this letter, our clients will rely on this letter on the question of costs.

Yours faithfully



Holding Redlich

Copy to: Amanda Kelly
63 The Ridge
Mount Eliza VIC 3930

Deed of undertaking

1. To:

Charles Frederick Marfleet of Lodge House, The Plain, Smeeth, TN25 6QZ, United Kingdom;
Ronald Clucas of 69 Northampton Road, Towcester, NN12 7AH, United Kingdom;
Keith John Chapman of 14 Oaken Coppice, Ashted, Surry, KT21 1DL, United Kingdom;
ERA Insurance Services Pty Ltd (now Greenflies Pty Ltd) of Level 1, 1049 Victoria Road, West Ryde NSW 2114, Australia;
Expense Reduction Analysts, Inc of 16479 North Dallas Parkway, Bent Tree Tower II, Suite 240, Addison, TX 75001, United States of America;
Expense Reduction Analysts International Limited of Hollins Mount, Hollins Lane, Bury, Lancashire, BL9 8DG, United Kingdom;
ERAGICS Limited of Hollins Mount, Hollins Lane, Bury, Lancashire, BL9 8DG, United Kingdom;
ERA Global Management Limited of New Bridge Street House, 30-34 New Bridge Street, London, EC4V 6BJ, United Kingdom,
(the **Obligees**)

2. From:

Kenneth Alan Armstrong of 63 The Ridge, Mount Eliza VIC 3930;
Amanda Anne Kelly of 63 The Ridge, Mount Eliza VIC 3930;
Armstrong Consulting Pty Ltd of 67 Glen Shian Lane, Mount Eliza VIC 3930;
Armstrong Strategic Management & Marketing Pty Ltd of 67 Glen Shian Lane, Mount Eliza VIC 3930,
(the **Obligors**)

On this day of September 2015, and with the intention of being legally bound to the Obligees, the Obligors jointly and severally undertake to the Obligees:

1. subject to clause 5, to immediately and permanently take all reasonable steps to withdraw or cause to withdraw from the website 'Unhappy Franchisee' located at 'www.unhappyfranchisee.com' all articles, webpages or published matter which make reference to, whether directly or indirectly, any one or more of the Obligees;
2. to forever refrain from publishing any material on any medium (whether in physical or electronic form) which makes reference, whether directly or indirectly, to the Obligees in a manner that is:
 - (a) defamatory;
 - (b) derogatory of their character; or
 - (c) damaging to their reputation; and
3. to forever refrain from supporting, assisting or procuring the publication by any third party of any material on any medium (whether in physical or electronic form) which makes reference, whether directly or indirectly, to the Obligees in a manner that is:
 - (a) defamatory;
 - (b) derogatory of their character; or
 - (c) damaging to their reputation;

4. to forever refrain from supporting or promoting litigation by any third parties against any one or more of the Obligees for any cause of action which may arise in respect of any of the matters addressed in:
 - (a) the article entitled, 'ERA EXPENSE REDUCTION ANALYSTS Franchise Fraud Allegations' appearing on the blog named 'Unhappy Franchisee' located at 'www.unhappyfranchisee.com/era-expetnse-reduction-analysts-franchise-fraud-allegations' (**Article**);
 - (b) any documents linked to or accessible from the Article, including the document entitled 'AFFIDAVIT Expense Reduction Analysts, Inc. from ERA Franchise Disclosure Document' (**Annotation Document**); and
 - (c) any fact, matter or circumstance in evidence or in issue on the pleadings in the proceedings to which the Obligors are presently party before the Supreme Court of New South Wales, having proceeding number 2011/76919;
5. to take all reasonable steps to cause the blog to issue a retraction of the Article and the Annotation Document on the Blog in words to the following effect:

"On 18 August 2015, Armstrong Consulting Pty Ltd submitted an article and a number of documents to this blog which contained a series of false and unsubstantiated allegations against the Expense Reduction Analysts franchise network. With apologies, Armstrong Consulting Pty Ltd unconditionally withdraws the article and the allegations it made against the Expense Reduction Analysts franchise network"
6. to keep this Deed of Undertaking and its terms strictly confidential.

Executed as a deed

Signed sealed and delivered by **Kenneth Alan Armstrong**

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)

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Signature of witness

.....
Kenneth Alan Armstrong

.....
Name of witness

Signed sealed and delivered by **Amanda Anne Kelly**

)
)
)

.....
Signature of witness

.....
Amanda Kelly

.....
Name of witness

Executed by **Armstrong Consulting Pty Ltd**
(ACN 073 726 940) in accordance with)
 section 127 of the Corporations Act 2001 (Cth))
)

.....
 Signature of director

.....
 Name of director

Executed by **Armstrong Strategic Management**
& Marketing Pty Ltd (ACN 005 709 928) in)
 accordance with section 127 of the)
 Corporations Act 2001 (Cth))

.....
 Signature of director

.....
 Name of director

Executed by **The Lion Partnership Pty Ltd (ACN**
139 432 107) in accordance with section 127 of)
 the Corporations Act 2001 (Cth))
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 Signature of director

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 Name of director

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