

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)  
NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
GENERAL DIVISION** **No: NSD1847/2010**

**NOTICE OF FILING**

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**Note**

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**FURTHER AMENDED CONSOLIDATED STATEMENT OF CLAIM**

(Amended pursuant to leave granted by Middleton J on 11 September 2012)

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

(P) NSD 1847 of 2010

**GABY HADCHITI and others named in the schedule**  
Applicants

and

**NUFARM LIMITED (ACN 091 323 312)**  
Respondent

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#### **NOTE AS TO TERMINOLOGY**

In this statement of claim, the following conventions are used in referring to financial results:

- (a) FY08, FY09 refer to the financial years ended 31 July 2008, 31 July 2009 etc;
- (b) 1H, 2H refer to the first and second half of the relevant financial year (1H08 being the six month period ended 31 January 2008, 2H08 being the six month period ended 31 July 2008 etc);
- (c) 1Q, 2Q, 3Q and 4Q refer to the first, second, third and fourth quarters of the relevant financial year (1Q08 being the three month period ended 30 October 2007, 2Q08 being the three month period ended 31 January 2008 etc); and
- (d) the defined terms in this pleading have been summarised in Annexure C to this statement of claim.

## PARTIES

1. Gaby Hadchiti (the First Applicant), Verbatt Pty Ltd (the Second Applicant) and Graham and Susan Roney (the Third and Fourth Applicants) commence these proceedings as representative parties pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of the Group Members (as defined in paragraph 3 below).
2. The Second Applicant:
  - 2.1. was and is a corporation duly incorporated pursuant to law;
  - 2.2. is and was at all material times the trustee of the Verbatt Trust;
3. The Applicants and the persons whom they represent (the **Group Members**) are persons who:
  - 3.1. acquired [an interest in](#) shares in the Respondent (**Nufarm**) during the period from 28 September 2009 to 31 August 2010 inclusive (the **Relevant Period**);
  - 3.2. [suffered loss and damage by reason of the Contravening Conduct pleaded in this Further Amended Consolidated Statement of Claim](#);
  - ~~3.2. held some or all of the shares acquired during the Relevant Period until:~~
    - ~~(a) 1 March 2010; or~~
    - ~~(b) 13 July 2010; or~~
    - ~~(c) 31 August 2010; and~~

### Particulars

Particulars of the Applicants' shareholdings are set in the Annexure A to this [Further Amended sConsolidated Statement of eClaim](#).

Particulars of the shareholdings of the Group Members will be provided following the trial of the common questions.

- 3.3. ~~who~~ are not:
  - (a) directors or officers, or a close associate (as defined by section 9 of the *Corporations Act 2001* (Cth)) of the Respondent; or
  - (b) a related party (as defined by section 228 of the *Corporations Act*) of the Respondent; or

- (c) a related body corporate (as defined by section 50 of the *Corporations Act*) of the Respondent; or
- (d) an associated entity (as defined by section 50AAA of the *Corporations Act*) of the Respondent; or
- (e) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; and

3.4. despite paragraphs 3.3(a) to 3.3(d), include Sumitomo Chemical Company Limited.

4. Nufarm is and at all material times was:

- 4.1. a company duly incorporated pursuant to law;
- 4.2. a corporation listed on a financial market operated by the [Australian Securities Exchange](#) (~~corporation known as the Australian Securities Exchange Limited (trading as the Australian Securities Exchange) (ASX)~~) and whose ordinary shares are ED securities for the purposes of s 111AE of the *Corporations Act*;
- 4.3. subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
- 4.4. a listed disclosing entity within the meaning of subs 111AL(1) of the *Corporations Act*; and
- 4.5. a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

#### **APPLICATION OF SECTION 674(2) OF THE *CORPORATIONS ACT* TO NUFARM**

- 5. At all material times, the ASX was a market operator of a listing market, namely the ASX's financial market, in relation to Nufarm for the purposes of s 674(1) of the *Corporations Act*.
- 6. At all material times, Rule 3.1 of the ASX Listing Rules has provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information.

7. At all material times, Rule 19.12 of the ASX Listing Rules has provided that an entity becomes aware of information if a director or executive officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity.
8. At all material times, s 674(2) of the *Corporations Act* applied to Nufarm by reason of:
  - 8.1. the matters alleged in paragraphs 5 and 39-41; and
  - 8.2. ss 111AP(1) and/or 674(1) of the *Corporations Act*.

### **NUFARM'S BUSINESS**

9. At all material times, Nufarm:
  - 9.1. carried on a business of manufacturing and distributing crop protection products, including herbicides, insecticides, fungicides and seed treatment;
  - 9.2. was a major global supplier of a herbicide commonly known as glyphosate to markets in Australia, New Zealand, Asia, Europe, North America and South America (**Nufarm's global markets**);
  - 9.3. supplied glyphosate to markets in Australia, New Zealand and, from FY09, Indonesia, under the brand name 'Roundup' under licence from Monsanto, the largest global supplier of glyphosate and the dominant supplier of glyphosate in the United States of America; and
  - 9.4. in the remainder of Nufarm's global markets, supplied a glyphosate product under its own branding.
10. At all material times, the sale of glyphosate in Nufarm's global markets (**Nufarm's glyphosate business**) was a significant part of Nufarm's business, representing:
  - 10.1. approximately 36% of its business by revenue in FY08;
  - 10.2. approximately 31% of its business by revenue in FY09; and
  - 10.3. approximately 28% of its business by revenue in FY10.

## **CONDITIONS IN THE GLOBAL GLYPHOSATE MARKET AND NUFARM'S FINANCIAL PERFORMANCE IN FY08 AND FY09**

### **(A) FY08**

11. During 2H08, glyphosate prices in most or all of Nufarm's global markets increased to historically high levels as a result of, among other things, a temporary reduction in production of glyphosate "technical", the key ingredient for the production of glyphosate, by Chinese producers prior to the Beijing Olympic Games held in August 2008.
12. Nufarm's FY08 financial results showed:
  - 12.1. its operating net profit after tax (**NPAT**) excluding material items was approximately A\$163.9 million, of which approximately \$128.5 million was earned in 2H08;
  - 12.2. its gross margin contribution from the sale of glyphosate was approximately \$280 million; and
  - 12.3. its average gross margin on the sale of glyphosate was approximately 31%.

#### **Particulars**

'A Day at the Farm' presentation delivered to the JP Morgan investor conference on 23 June 2009, page 4; FY09 End of Year Briefing Presentation (as defined in par 20 below), pages 7 and 23.

### **(B) FY09**

13. On 18 July 2008 Nufarm forecast an after tax operating profit of \$220 million to \$230 million for FY09.

#### **Particulars**

Nufarm company announcement entitled 'Guidance Update', dated 18 July 2008.

14. During FY09, from about August or September 2008:
  - 14.1. increased production of glyphosate "technical" by Chinese manufacturers resulted in an increase in the supply of glyphosate which exceeded demand in most or all of Nufarm's global markets; and

- 14.2. glyphosate prices in most or all of Nufarm's global markets decreased significantly, particularly in 4Q09 and in the US market.

#### Particulars

- (a) As to subpar 14.1, the Applicants refer to statements to that effect in:
- (i) Nufarm's FY09 End of Year Briefing Presentation, at page 4;
  - (ii) Nufarm's FY09 Preliminary Final Report (as defined in par 20 below), at pages 2-3 of the Managing Director's Comments;
  - (iii) the Chairman's Address to the 2009 AGM (as defined in par 37 below), at page 1; and
  - (iv) the Managing Director's Address to the 2009 AGM (as defined in par 38 below), at pages 1-2 and;
  - (v) the graph shown on Nufarm's presentation to the Macquarie 12<sup>th</sup> Annual Australian Conference Sydney dated 5 May 2011 at page 12.
- (b) As to subpar 14.2, the Applicants refer to statements to that effect in:
- (i) Nufarm's First FY09 Forecast Downgrade (as defined in par 16 below) dated 16 June 2009;
  - (ii) a letter dated 27 August 2009 from Nufarm to the ASX;
  - (iii) Nufarm's FY09 End of Year Briefing Presentation, at pages 5-6;
  - (iv) Nufarm's FY09 Preliminary Final Report, at pages 1-3 of the Managing Director's Comments on;
  - (v) Nufarm's FY09 Annual Report (as defined in par 31 below), at page 3;
  - (vi) the Chairman's Address to the 2009 AGM, at page 1; and
  - (vii) the Managing Director's Address to the 2009 AGM, at pages 1-2.
15. On 31 March 2009, Nufarm published and lodged with the ASX a document entitled "Report to Shareholders – 6 months ended January 31, 2009" (**FY09 Preliminary Half Year Report**) in which it:
- 15.1. stated that it expected to report NPAT excluding material items for H109 of approximately \$65.129 million; and



- 15.2. confirmed that it remained on track to generate a NPAT for FY09 of approximately A\$220 million.
16. On 16 June 2009, Nufarm published and lodged with the ASX a company announcement entitled “Nufarm” adjusts earnings guidance” (the **First FY09 Forecast Downgrade**) in which it said that:
- 16.1. glyphosate sales in May and through the first half of June were tracking significantly below previous forecasts and that it was apparent that the full year contribution from Nufarm’s glyphosate business would not meet earnings targets;
- 16.2. it expected to miss its previous guidance of approximately \$220 million by approximately 15%, thereby downgrading its forecast operating NPAT for FY09 to approximately A\$187 million;
- 16.3. a combination of later than normal buying decisions, seasonal impacts, lower application rates and distribution customers not able or willing to hold normal inventory levels had combined to dramatically impact the glyphosate business in recent weeks; and
- 16.4. the most dramatic impact had been felt in the US market, with growers in many areas planting crops very late in the season and requiring fewer applications of glyphosate.
17. On 24 July 2009, Nufarm sent a letter to the ASX in which it said that its net operating profit for FY09 may be more than 10-15% below the adjusted guidance given on 16 June 2009, thereby downgrading its forecast operating NPAT for FY09 to between approximately A\$159 million and A\$169 million or less (the **Second FY09 Forecast Downgrade**).
18. As at 31 July 2009, being the end of Nufarm’s FY09:
- 18.1. Nufarm’s glyphosate inventory levels were higher than average;
- 18.2. much of its glyphosate inventory had been purchased during the period of high prices for glyphosate “technical”; and
- 18.3. Nufarm wrote down the value of its glyphosate inventory in an attempt to reduce its cost base to a competitive level for the commencement of FY10.

### Particulars

Director's Comments on Nufarm's FY09 Preliminary Final Report, page 1; FY09 End of Year Briefing Presentation, page 10; Managing Director's Address to the 2010 EGM held on 2 March 2010 (as defined in par 52 below), page 2.

19. On 27 August 2009, Nufarm sent a letter to the ASX in which Nufarm said that it estimated that its forecast operating NPAT for FY09, excluding material items, would be approximately A\$135 million to A\$145 million (**the Third FY09 Forecast Downgrade**).
20. On 28 September 2009, Nufarm published its Preliminary Final Report for the Year Ended 31 July 2009 (**FY09 Preliminary Final Report**) and an investor presentation document entitled "2009 Full Year Results" dated September 2009 (**FY09 End of Year Briefing Presentation**), which showed that:
  - 20.1. its net operating profit after tax excluding material items for FY09 was approximately A\$159.7 million, of which approximately \$94.5 million was earned in 2H09, being the six months to 31 July 2009;
  - 20.2. that its gross margin contribution from the sale of glyphosate had fallen from approximately A\$280 million in FY08 to approximately A\$124 million in FY09; and
  - 20.3. that its average gross margin on the sale of glyphosate had fallen from approximately 31% in FY08 to approximately 15% in FY09.

#### **Particulars**

Nufarm's FY09 Preliminary Final Report consisted of:

- (a) Appendix 4E document – Preliminary Final Report for the Year Ended 31 July 2009;
- (b) Managing Director's Comments on the Preliminary Final Report;
- (c) Financial Statements and Accounting Policies;
- (d) Directors' Report;
- (e) Directors' Declaration; and
- (f) its Auditor's Independence Declaration and Independent Audit Report.

## CONTRAVENTIONS

### **(A) 28 September 2009 Representations**

21. In its FY09 Preliminary Final Report, Nufarm made express statements to the effect that:
  - 21.1. its glyphosate inventory levels at the end of FY09 were higher than average (page 1 of the Directors' Comments on the FY09 Preliminary Final Report);
  - 21.2. much of its glyphosate inventory had been purchased during the period of high prices for glyphosate "technical" (page 2);
  - 21.3. it had booked a \$40.8 million after tax write-down on the value of its glyphosate inventory, largely held in the USA, as at 31 July 2009 (page 1);
  - 21.4. it had booked a \$22.7 million after tax inventory adjustment material item for the loss on US glyphosate sales (pages 1 and 4);
  - 21.5. it had written down the value of its glyphosate inventory in an attempt to reduce its cost base to a competitive level for the start of FY10 (pages 1 and 7);
  - 21.6. the adjusted value of its written-down glyphosate inventory placed it in a position to generate profits in the 2010 year while selling glyphosate at market competitive prices (page 1);
  - 21.7. its management expected to see growth in company profitability in FY10 due in part to a more competitive position in glyphosate (page 7);
  - 21.8. it had taken measures to ensure its glyphosate business would be competitive and profitable in FY10 (page 7);
  - 21.9. with an adjusted cost base and strong market access, Nufarm was well placed to capture an appropriate share of glyphosate sales across its global markets (page 7);
  - 21.10. Nufarm was forecasting a return to acceptable profitability in its glyphosate business in FY10 (page 7);
  - 21.11. Nufarm would generate much improved financial results in FY10 (page 8); and

- 21.12. Nufarm's directors were confident that FY10 would see an improvement in the quality of earnings and believed that the company was well positioned to resume its strong profit growth (page 8).
22. In its FY09 End of Year Briefing Presentation, Nufarm made express statements to the following effect that:
- 22.1. its glyphosate business would see partial profit recovery in FY10 (page 10);
- 22.2. its glyphosate inventory had been written down to facilitate acceptable margins in FY10 (page 10);
- 22.3. market conditions in the global glyphosate markets were expected to remain challenging but that Nufarm was positioned to rebuild profitability in this segment (page 33); and
- 22.4. profitability in Nufarm's glyphosate business, combined with other factors, would generate positive profit growth in FY10 (page 3).
23. By reason of the matters alleged in paragraphs 21 and 22, on 28 September 2009, Nufarm represented that it had a genuine and reasonable basis for making the statements that:
- 23.1. as a result of writing down the value of its glyphosate inventory as at 31 July 2009 by \$40.8 million, that Nufarm's glyphosate business would be profitable in FY10 (the **Inventory Representation**); and
- 23.2. its NPAT for FY10 would be better than its FY09 NPAT (the **Improved Profit Representation**)
- (individually or together, these are referred to as the **28 September 2009 Representations**).

#### **Particulars**

The 28 September 2009 Representations were partly express and partly implied.

In so far as they were express, they were in writing in the FY09 Preliminary Final Report and the FY09 End of Year Briefing Presentation.

In so far as they were implied, they were to be implied as a matter of law, including by s 769C of the *Corporations Act*; and/or by reason of the facts that they were made in company documents released to the market by means of the ASX company announcements platform and Nufarm knew or ought to have known that investors and potential investors in its shares may rely upon the statements and forecasts in

those documents in making decisions whether to acquire or retain shares in Nufarm.

24. The 28 September 2009 Representations were made:
  - 24.1. in relation to future matters, namely Nufarm's operating profit for FY10;
  - 24.2. in relation to a financial product, namely Nufarm's shares; and
  - 24.3. in trade or commerce.
25. At the time of making the 28 September 2009 Representations, Nufarm stated that it expected that:
  - 25.1. as at 31 July 2009, glyphosate prices in most of its global markets had reached their low point and that they would remain steady or improve during FY10; and
  - 25.2. as a result of the write-down of the value of its glyphosate inventory alleged in paragraph 18 above, Nufarm would be able to clear the remainder of its inventory without incurring further losses on sales of that inventory.

#### **Particulars**

Managing Director's Address to the 2010 EGM, page 2.

26. Contrary to Nufarm's stated expectations referred to in paragraph 25, the market conditions during August and September 2009 were such that:
  - 26.1. glyphosate prices in all of Nufarm's global markets had continued to decline;
  - 26.2. Nufarm continued to sell its glyphosate inventory at the lower market prices and suffered further losses in doing so; and
  - 26.3. Nufarm provided its distribution partners in a number of its global markets with one-off price protection measures and suffered further losses in doing so.

#### **(Market Conditions during August and September 2009)**

#### **Particulars**

Managing Director's Address to the 2010 EGM, pages 2-3; FY09 Preliminary Half Year Report, page 2; FY10 Interim Results Presentation (as defined in paragraph 71 below).

27. Further to paragraph 26:

27.1. on or about 17 September 2009, Monsanto announced that the price of its Roundup branded glyphosate products would be reduced by as much as 50% compared to the previous year, effective immediately (**Monsanto's Roundup price reduction**); and

**Particulars**

Monsanto Company Announcement dated 17 September 2009 entitled "Monsanto Company Announces Approach to Chemistry to Help US Farmers Manage Risk".

27.2. Monsanto's Roundup price reduction was likely to have the effect of increasing competition for glyphosate sales and place further pressure on glyphosate prices in the US market.

**Particulars**

The matters alleged in par 27.2 are to be inferred from, inter alia, the statement in a letter dated 4 September 2009 from Nufarm to the ASX in which Nufarm stated that an earlier announcement made by Monsanto on 27 May 2009 that suggested that demand for glyphosate was substantially below earlier expectations and total sales for the remainder of the US season were likely to be significantly less than anticipated had "triggered aggressive price competition in the US market".

28. At the time of making the 28 September 2009 Representations, Nufarm was or ought to have been aware of:

28.1. the matters alleged in paragraphs 11-20 above (the **Market Conditions during FY08 and FY09**);

28.2. the fact that neither FY08 nor FY09 was "an appropriate base or reference point for projecting sustainable profit contributions from glyphosate on a forward looking basis";

28.3. the fact that it had attributed its FY09 results, in part, to a "[d]ramatic reversal of supply/demand balance in [its] global glyphosate business";

28.4. the Market Conditions during August and September 2009 (as alleged in paragraph 26 above);

28.5. Monsanto's Roundup price reduction and its likely effect (as alleged in paragraph 27 above); and

- 28.6. the fact that revenue and profitability for Nufarm's business as a whole was heavily dependent on the revenue and profitability of its glyphosate business.

**Particulars**

- (a) Nufarm's awareness of the Market Conditions during FY08 and FY09 is to be inferred from its knowledge of its own past financial performance and performance of global glyphosate markets in FY08 and FY09;
  - (b) Nufarm's awareness of the matters alleged in subpar 28.2 is to be inferred from the statement to that effect in the Managing Director's Address to the 2010 EGM;
  - (c) Nufarm's awareness of the matters alleged in subpar 28.3 is to be inferred from the statement to that effect in the FY09 End of Year Briefing Presentation (page 4);
  - (d) Nufarm's awareness of the Market Conditions during August and September 2009 is to be inferred from the statement in Nufarm's company announcement dated 16 June 2009 that "glyphosate sales in May [2009] and through the first half of June [2009] are tracking significantly below previous forecasts" which shows that Nufarm was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly;
  - (e) Nufarm's awareness of Monsanto's Roundup price reduction and its likely effect is to be inferred from the fact that Nufarm can be assumed to have monitored company announcements made by its competitors and from the matters referred to in the particulars to subpar 27.2; and
  - (f) Nufarm's awareness of the matters alleged in subpar 28.6 are to be inferred from the matters alleged in paragraphs 10 and 11 above and Nufarm's knowledge of its own past financial performance.
29. By reason of the matters alleged in paragraphs 25-28, Nufarm did not have a reasonable basis for making either or both of the 28 September 2009 Representations.

**Particulars**

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

30. By reason of the matters alleged in paragraphs 21-29 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- 30.1. s 1041H of the *Corporations Act*;
  - 30.2. s 12DA(1) of the ASIC Act; and/or

30.3. s 9 of the *Fair Trading Act 1999* (Vic) (**FTA**).

**(B) 26 October 2009 Representations**

31. On 26 October 2009, Nufarm published its **FY09 Annual Report** in which it repeated the statements made in its FY09 Preliminary Final Report, as alleged in paragraph 21 above.

**Particulars**

The Applicants refer to the Managing Director's Review at pages 3-5 of the FY09 Annual Report.

32. By reason of the matters alleged in paragraph 31 above, on 26 October 2009, Nufarm repeated the Inventory Representation and the Improved Profit Representation (the **26 October 2009 Representation**).

**Particulars**

The 26 October 2009 Representation was partly express and partly implied.

In so far as it was express, it was constituted by the repetition of the Inventory Representation and the Improved Profit Representation in the FY09 Annual Report.

In so far as it was implied, it was to be implied as a matter of law, including by s 769C of the *Corporations Act*; and/or by reason of the facts that the Inventory Representation and the Improved Profit Representation were made in a company document released to the market by means of the ASX company announcements platform and Nufarm knew or ought to have known that investors and potential investors in its shares may rely upon the statements and forecasts in the document in making decisions whether to acquire or retain shares in Nufarm.

33. The 26 October 2009 Representation was made:
- 33.1. in relation to a future matter, namely Nufarm's operating profit for FY10;
  - 33.2. in relation to a financial product, namely Nufarm's shares; and
  - 33.3. in trade or commerce.
34. As at 26 October 2009, Nufarm was, or ought to have been, aware of:
- 34.1. the matters alleged in paragraph 28 above; and



34.2. the fact that glyphosate prices in all of Nufarm's global markets had continued to decline during October 2009.

**Particulars**

- (a) As to subpar 34.1, the Applicants refer to and repeat the particulars to par 28 above.
- (b) Nufarm's awareness of the matters alleged in par 34.2 is to be inferred from the statement in Nufarm's company announcement dated 16 June 2009 that "glyphosate sales in May [2009] and through the first half of June [2009] are tracking significantly below previous forecasts" which shows that Nufarm was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly.

35. By reason of the matters alleged in paragraph 34, Nufarm did not have a reasonable basis for making the Inventory Representation or the Improved Profit Representation as at 26 October 2009.

**Particulars**

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

36. By reason of the matters alleged in paragraphs 31-35 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

36.1. s 1041H of the *Corporations Act*;

36.2. s 12DA(1) of the ASIC Act; and/or

36.3. s 9 of the FTA.

**(C) 3 December 2009 Representations**

37. On 3 December 2009, the Chairman of Nufarm addressed the Annual General Meeting of Shareholders and a copy of his speech was published and lodged with the ASX on that day (the **Chairman's Address to the 2009 AGM**), in which he made the following express statements:

37.1. glyphosate raw materials were being purchased by Nufarm at market competitive prices;

37.2. Nufarm's margins on the sale of glyphosate would start to recover over the balance of FY10;

- 37.3. Nufarm's profit for 1H10 would be significantly down on the previous corresponding period but in line with Nufarm's internal projections;
- 37.4. on a full year basis, operating profit was expected to show meaningful growth in terms of both quantity and quality and both cash flow and balance sheet strength would improve;
- 37.5. Nufarm was continuing to operate within its various banking covenants and expected to continue to do so;
- 37.6. Nufarm remained very confident that its balance sheet and cashflow would strengthen over the balance of FY10.
38. Further to paragraph 37, the Managing Director of Nufarm addressed the 2009 AGM on 3 December 2009 and a copy of his speech was published and lodged with the ASX on that day (**Managing Director's Address to the 2009 AGM**), in which the following express statements were made:
- 38.1. Nufarm would begin to see recovery in the profitability of its glyphosate business (page 2);
- 38.2. as the glyphosate market recovered over the next couple of seasons, Nufarm was very confident that the value of its position (as one of the world's leading suppliers of glyphosate) would be reinforced (page 2);
- 38.3. that with a lower, market competitive cost base and continued strong market access there would be a material improvement in Nufarm's glyphosate business in FY10 (page 5); and
- 38.4. Nufarm was on a curve that reflected improving business conditions and that it was confident that net operating profit for FY10 would show a considerable improvement on FY09 (page 5).
39. By reason of the matters alleged in paragraphs 37 and 38, on 3 December 2009, Nufarm repeated the Improved Profit Representation (the **3 December 2009 Representation**).

#### **Particulars**

The 3 December 2009 Representation was partly express and partly implied.

In so far as it was express, it was in writing in the Chairman's Address and the Managing Director's Address to the 2009 AGM.

In so far as it was implied, it was to be implied as a matter of law, including by s 769C of the *Corporations Act*; and/or by reason of the facts that the 3 December 2009 Representation were made in formal

addresses to shareholders by the Chairman and Managing Director to the 2009 AGM, copies of which were released to the market by means of the ASX company announcements platform, and Nufarm knew or ought to have known that investors and potential investors in its shares may rely upon the statements and forecasts in those documents in making decisions whether to acquire or retain shares in Nufarm.

40. The 3 December 2009 Representation was made:
  - 40.1. in relation to a future matter, namely Nufarm's operating profit for FY10;
  - 40.2. in relation to a financial product, namely Nufarm's shares; and
  - 40.3. in trade or commerce.
41. In fact, the market conditions during October and November 2009 were such that:
  - 41.1. glyphosate prices in all of Nufarm's global markets had continued to decline;
  - 41.2. Nufarm continued to sell its glyphosate inventory at the lower market prices and suffered further losses in doing so; and
  - 41.3. Nufarm provided one-off price protection measures to its distribution partners in a number of its global markets and suffered further losses in doing so.

**(Market Conditions during October and November 2009)**

**Particulars**

Managing Director's Address to the 2010 EGM, pages 2-3; FY09 Preliminary Half Year Report, page 2; FY10 Interim Results Presentation, page 12.

42. Further to paragraph 41, as at 3 December 2009, Nufarm was, or ought to have been, aware of:
  - 42.1. the matters alleged at paragraph 28 above;
  - 42.2. its financial results for 1Q10;
  - 42.3. the Market Conditions during October and November 2009 (as alleged in paragraph 41 above); and

- 42.4. the fact that it expected that there would be a continuation of lower and more competitive pricing and supply in the global glyphosate market in the remainder of FY10.

**Particulars**

- (1) As to subpar 42.1, the Applicants refer to and repeat the particulars to par 28 above.
  - (2) As to subpar 42.2, Nufarm ought to have been aware by 3 December 2009 of its financial performance to 31 October 2009.
  - (3) As to subpar 42.3, Nufarm's awareness of the Market Conditions during October and November 2009 is to be inferred from the statement in Nufarm's company announcement dated 16 June 2009 that "glyphosate sales in May [2009] and through the first half of June [2009] are tracking significantly below previous forecasts" which shows that Nufarm was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly, and FY10 Interim Results Presentation, page 12.
  - (4) As to subpar 42.4, the Applicants refer to the express statement to that effect in the Managing Director's Address to the 2009 AGM (page 2).
43. By reason of the matters alleged in paragraphs 41-42, Nufarm did not have a reasonable basis for making the Improved Profit Representation as at 3 December 2009.

**Particulars**

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

44. By reason of the matters alleged in paragraphs 37-43 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- 44.1. s 1041H of the *Corporations Act*;
  - 44.2. s 12DA(1) of the ASIC Act; and/or
  - 44.3. s 9 of the FTA.

**(D) Financial Performance in 1H10**

45. During 1H10 (**Nufarm's Financial Performance during 1H10**):
- 45.1. average sales prices for glyphosate in most or all global markets in 1H10 were less than half the prices achieved in the corresponding period of the previous financial year;
  - 45.2. average sales prices and margins for glyphosate products in most or all global markets for 1H10 had been lower than projected and lower than expected by Nufarm;
  - 45.3. average sales prices for glyphosate during 1H10 were below the adjusted book value of its inventory after the write down alleged in paragraph 18 above; and
  - 45.4. Europe had experienced severe winter conditions compared to average and North America had experienced very cold winter conditions compared to average.

**Particulars**

The Applicants refer to:

- (a) the FY09 End of Year Briefing Presentation, at pages 5-12 and 22-23;
- (b) the Managing Director's Comments in Nufarm's FY09 Preliminary Final Report;
- (c) Nufarm's FY09 Annual Report;
- (d) the Chairman's Address and the Managing Director's Address to the 2009 AGM; and
- (e) the Managing Director's Address to the 2010 EGM..

**(E) 1H10 Financial Results Disclosure Contravention**

46. At some time during 1H10 but no later than 11 February 2010 (the **Relevant Date**), Nufarm was, or ought to have been, aware that its financial result for 1H10 was likely to be a small operating loss, a breakeven result or a small operating profit in the order of AUD\$5-7 million (**Nufarm's Likely 1H10 Financial Result**).

**Particulars**

The Applicants refer to the document published by ASIC titled "Details of infringement notice issued to Nufarm" on 1 December 2010.

47. A small operating profit in the order of AUD\$5-7 million would have represented a fall of approximately 89% in NPAT from the previous corresponding period.

#### **Particulars**

The Applicants refer to the document published by ASIC titled "Details of infringement notice issued to Nufarm" on 1 December 2010.

48. In the circumstances, Nufarm's Likely 1H10 Financial Result was:
- 48.1. information that a reasonable person would expect to have a material effect on the price or value of the shares in Nufarm; and
- 48.2. not generally available.
49. By reason of the matters alleged in paragraphs 5-9 and 46-48 above, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of Nufarm's Likely 1H10 Financial Result on and from the Relevant Date.
50. Notwithstanding the matters alleged in paragraphs 46-49 above, Nufarm did not notify the ASX of its Likely 1H10 Financial Result at any time during the Relevant Period until 2 March 2010.

#### **Particulars**

The notification of Nufarm's Likely 1H10 Financial Result was express and in writing in the notification of Nufarm's Preliminary Half Year Results on 2 March 2010 (as alleged in paragraph 52 below).

51. By reason of the matters alleged in paragraphs 46-50 above, Nufarm contravened s 674(2) of the *Corporations Act* (the **1H10 Financial Results Disclosure Contravention**).

#### **(F) 2 March 2010 Representations**

52. On 2 March 2010, the Managing Director of Nufarm, addressed an Extraordinary General Meeting of the Shareholders (**Managing Director's Address to the 2010 EGM**) in which he stated that:
- 52.1. Nufarm would be reporting a headline loss for the six months to the end of January 2010 of \$40 million, with some \$33 million representing material items including glyphosate trading impacts (page 2);

- 52.2. one of the contributing factors to the first half result was lower than projected glyphosate prices and margins in all global markets compared to the previous corresponding period (page 2);
  - 52.3. Nufarm had opted to suffer a further short-term loss by selling its inventories of glyphosate at the lower market prices in order to reduce Nufarm's cost position on subsequent sales and maintain market share (page 2);
  - 52.4. there were clear signs of profit recovery in Nufarm's glyphosate business;
  - 52.5. gross margins on glyphosate of 25% were achievable in FY10;
  - 52.6. its forecast net operating profit after tax, excluding material items, for FY10 was between A\$110 million and A\$130 million (the **FY10 Profit Forecast**); and
  - 52.7. that its projected profit for 2H10 was based on realistic assumptions.
53. By reason of the matters alleged in paragraph 52, Nufarm represented that it had a genuine and reasonable basis for making the statement that its forecast operating NPAT for FY10 was between A\$110 million and A\$130 million (the **2 March 2010 Representation**).

#### **Particulars**

The 2 March 2010 Representation was partly express and partly implied.

In so far as it was express, in writing in the Managing Director's Address to the 2010 EGM, a copy of which was provided by Nufarm to the ASX on or about 2 March 2010 for publication on the ASX company announcements platform and was also published by Nufarm on its website.

In so far as it was implied, it was to be implied as a matter of law, including by s 769C of the *Corporations Act*, and/or by reason of the facts that:

- (i) the FY10 Profit Forecast was made in a formal address by the Managing Director to the shareholders of an ASX listed company, a copy of which was to be released to the market by means of the ASX company announcements platform;
- (ii) Nufarm knew or ought to have known that investors and potential investors in its shares may rely upon the FY10 Profit Forecast in making decisions whether to acquire or retain shares in Nufarm; and
- (iii) the Managing Director stated in his Address that Nufarm had "just completed a detailed internal review and updated forecast" and that its forecast profit recovery in 2H10 was "consistent with

what we have been able to achieve in previous years and is based on realistic assumptions”.

54. The FY10 Profit Forecast and the 2 March 2010 Representation were made:
  - 54.1. in relation to a future matter, namely Nufarm’s operating profit for FY10;
  - 54.2. in relation to a financial product, namely Nufarm’s shares; and
  - 54.3. in trade or commerce.
55. Further to paragraph 54, at no time until 14 July 2010 did Nufarm withdraw or qualify the FY10 Profit Forecast or the 2 March 2010 Representation and accordingly they were continuing representations.
56. As at 2 March 2010, Nufarm was, or ought to have been, aware of:
  - 56.1. the Market Conditions during August and September 2009;
  - 56.2. the Market Conditions during October and November 2009;
  - 56.3. Nufarm’s Financial Performance during 1H10;
  - 56.4. the matters stated in the Managing Director’s Address to the 2010 EGM as alleged in paragraph 52 above;
  - 56.5. that both Europe and North America had experienced long and severe winter conditions in 1H10 which may, among other things, delay planting of crops and result in growers in those markets requiring fewer applications of glyphosate;
  - 56.6. that late planting of crops by growers in the US market resulting in growers in those markets requiring fewer applications of glyphosate had contributed to in Nufarm’s poor financial performance in FY09;
  - 56.7. the fact that in order to achieve the FY10 Profit Forecast it needed:
    - (a) at least average climatic conditions in all global markets for the remainder of FY10;
    - (b) global demand, prices and margins for glyphosate to increase substantially in 2H10;
    - (c) to make “catch up” sales of glyphosate in Europe and North America in 2H10 that, but for the severe winter conditions in those regions, it had expected to make in 1H10, in circumstances where Monsanto’s Roundup price reduction, as



alleged in paragraph 27 above, was likely to increase competition for glyphosate sales and place further pressure on glyphosate prices in the US market during 2H10; and

- (d) to achieve an operating profit, excluding material items, of approximately A\$120-A\$140 million for 2H10.

56.8. that a 2H10 operating NPAT of approximately A\$120-A\$140 million:

- (a) would not be consistent with, but would be substantially in excess of, its operating profit for 2H09; and
- (b) would be consistent with, or in excess of, its operating profit for 2H08; and

56.9. that a significant factor in its operating profit result for 2H08 had been the glyphosate price bubble between about April 2008 and the end of FY08.

#### **Particulars**

- (1) As to subpar 56.1, the Applicants refer to and repeat the particulars to par 26 above.
- (2) As to subpar 56.2, the Applicants refer to and repeat the particulars to par 41 above.
- (3) Nufarm's awareness of the matters alleged in subpars 56.3 and 56.4 is to be inferred from the statements made by it in the Managing Director's Address to the 2010 EGM.
- (4) Nufarm's awareness of the matters alleged in subpars 56.5 and 56.6 is to be inferred from the statements made to that effect in Nufarm's letter dated 16 June 2009 to the ASX and the Managing Director's Address to the 2010 EGM (at pages 3-4).
- (5) Nufarm's awareness of the matters alleged in subpars 56.7-56.9 is to be inferred from its knowledge of its own past financial performance.

57. By reason of the matters alleged in paragraph 56, Nufarm did not have reasonable grounds for making the FY10 Profit Forecast as at 2 March 2010.

#### **Particulars**

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

58. By reason of the matters alleged in paragraphs 52-57 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

58.1. s 1041H of the *Corporations Act*;

58.2. s 12DA(1) of the ASIC Act; and/or

58.3. s 9 of the FTA.

**(G) 2 March 2010 Continuous Disclosure Contraventions**

**(i) Profit Forecast Disclosure Contravention**

59. Further or alternatively, by reason of the matters alleged in paragraph 56 above, Nufarm ought to have formed the opinion by about 2 March 2010 that its net operating profit after tax, excluding material items, for FY10 would be materially less than the FY10 Profit Forecast (the **Revised Profit Forecast**).

60. The Revised Profit Forecast was:

60.1. information that a reasonable person would expect to have a material effect on the price or value of the shares in Nufarm; and

60.2. not generally available during the period from 2 March 2010 to 14 July 2010.

61. By reason of the matters alleged in paragraphs 5-9 and 59-60 above, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the Revised Profit Forecast on and from 2 March 2010.

62. Notwithstanding the matters alleged in paragraphs 59-61 above, Nufarm did not notify the ASX of the Revised Profit Forecast at any time until 14 July 2010.

**Particulars**

The notification of the Revised Profit Forecast was express and in writing in the FY10 Profit Forecast Downgrade on 14 July 2010 (as defined in par 106).

63. By reason of the matters alleged in paragraphs 59-62 above, Nufarm contravened s 674(2) of the *Corporations Act* (the **2 March 2010 Profit Forecast Disclosure Contravention**).

**(ii) Net Debt Forecast Disclosure Contravention**

64. Further or alternatively, on 2 March 2010, Nufarm announced that its forecast net debt at the end of FY10 was approximately \$350 million.

**Particulars**

The announcement was express and in writing in the Managing Director's Address to the 2010 EGM, a copy of which was provided by Nufarm to the ASX on or about 2 March 2010 for publication on the ASX's company announcements platform and was also published by Nufarm on its website.

65. As at 2 March 2010, Nufarm was, or ought to have been, aware that:
- 65.1. its accounts receivable cash collection cycle for 2H08 and 2H09 had on average been about 25% lower than its accounts receivable cash collection cycle for 1H08 and 1H09 respectively; and
- 65.2. the percentage decrease in its accounts receivable cash collection cycle between 1H10 and 2H10 was likely to be consistent with the percentage decrease in 2H08 and 2H09.

**Particulars**

Further particulars may be provided following discovery and inspection and the provision of expert evidence.

66. By reason of the matters alleged in paragraph 65, Nufarm ought to have formed the opinion by about 2 March 2010 that its net debt as at the end of FY10 would be approximately \$500m (the **First Revised FY10 Net Debt Forecast**).
67. The First Revised FY10 Net Debt Forecast was:
- 67.1. information that a reasonable person would expect to have a material effect on the price or value of the shares in Nufarm; and
- 67.2. not generally available during the period from 2 March 2010 to 1 September 2010.
68. By reason of the matters alleged in paragraphs 5-9 and 64-67 above, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the First Revised FY10 Net Debt Forecast on and from 2 March 2010.
69. Notwithstanding the matters alleged in paragraphs 64-68 above, Nufarm did not notify the ASX that its net debt as at the end of FY10 would be approximately \$500m or higher until 1 September 2010.

70. By reason of the matters alleged in paragraphs 64-69 above, Nufarm contravened s 674(2) of the *Corporations Act* (the **First Net Debt Disclosure Contravention**).

**(H) 30 March 2010 Representations**

71. On or about 30 March 2010, Nufarm published its Half Yearly Report to Shareholders and its Interim Results for the 6 months to 31 January 2010, in the course of which it repeated the FY10 Profit Forecast.

**Particulars**

The repetition of the FY10 Profit Forecast was express and in writing in:

- (a) a company announcement titled "Report to Shareholders for the 6 months ended January 31, 2010" dated 29 March 2010 (**FY10 Half Year Report to Shareholders**), on page 5; and
- (b) an investor presentation document titled "Interim Results – 6 months to January 31, 2010" dated 30 March 2010 (**FY10 Interim Results Presentation**), on page 25,

both of which were provided by Nufarm to the ASX on 29 or 30 March 2010 for publication on the ASX company announcements platform and were also published by Nufarm on its website.

72. By reason of the matters alleged in paragraph 71 above, on or before 30 March 2010, Nufarm represented that it had a genuine and reasonable basis for the FY10 Profit Forecast as at that date (the **30 March 2010 Representation**).

**Particulars**

The 30 March 2010 Representation was partly express and partly implied.

In so far as it was express, it was contained in the FY10 Half Year Report to Shareholders and the FY10 Interim Results Presentation.

In so far as it was to be implied, it was to be implied as a matter of law, including by s 769C of the *Corporations Act*, and/or by reason of the facts that Nufarm:

- (i) repeated the FY10 Profit Forecast in the context of the presentation of its results for 1H10 in documents which were to be provided to the ASX for release to the market;
- (ii) knew or ought to have known that investors and potential investors in its shares may rely upon the FY10 Profit Forecast in making decisions whether to acquire or retain shares in Nufarm.

73. The 30 March 2010 Representation was made:
- 73.1. in relation to a future matter, namely Nufarm's operating profit for FY10;
  - 73.2. in relation to a financial product, namely Nufarm's shares; and
  - 73.3. in trade or commerce.
74. Further to paragraph 73, at no time until 14 July 2010 did Nufarm withdraw or qualify the FY10 Profit Forecast and accordingly the 2 March 2010 Representation was a continuing representation.
75. As at 30 March 2010, Nufarm was, or ought to have been, aware:
- 75.1. of the matters alleged in paragraph 56 above;
  - 75.2. that average gross margins on glyphosate sales in 1H10 had been approximately 6% (compared to average gross margins of 41% for FY08 and 15% for FY09);
  - 75.3. that "severe winter conditions" had continued into March 2010 in Europe and North America;
  - 75.4. that it needed to monitor and assess seasonal demand and its impact on glyphosate pricing;
  - 75.5. that price recovery in different markets during the remainder of FY10, if it occurred at all, was likely to be variable; and
  - 75.6. of its own sales volumes and prices for the sale of glyphosate in all global markets for February 2010 and at least the first two weeks of March 2010.

#### **Particulars**

- (a) As to subparagraph 75.1, the Applicants refer to and repeat the particulars to paragraph 61 above.
- (b) As to subparagraph 75.2, the Applicants refer to the FY10 Half Year Report to Shareholders, page 4.
- (c) As to subparagraphs 75.3 - 75.5, Nufarm's awareness is to be inferred from the statements made to the effect alleged in the FY10 Interim Results Presentation, at pages 5 and 12.
- (d) As to subparagraph 75.6, Nufarm's awareness of its glyphosate sales volumes and prices is to be inferred from the fact that it was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly, which is itself to be inferred from the statement in Nufarm's company announcement dated 16 June 2009 that

“glyphosate sales in May [2009] and through the first half of June [2009] are tracking significantly below previous forecasts”.

76. By reason of the matters alleged in paragraph 75, Nufarm did not have reasonable grounds for making the FY10 Profit Forecast as at 30 March 2010.

#### Particulars

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

77. By reason of the matters alleged in paragraphs 71-76 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

77.1. s 1041H of the *Corporations Act*;

77.2. s 12DA(1) of the ASIC Act; and/or

77.3. s 9 of the FTA.

#### (I) 20 April 2010 Representations

78. On 20 April 2010, Nufarm announced a \$250 million fully underwritten equity raising (the **Entitlement Offer**), in the course of which it:

78.1. confirmed its FY10 Profit Forecast; and

78.2. represented that it had reasonable grounds for the FY10 Profit Forecast as at that date (the **20 April 2010 Representation**).

#### Particulars

- (1) The confirmation of the FY10 Profit Forecast was express and in writing in:

(a) a company announcement titled “Nufarm Launches \$250 Million Equity Raising” dated 20 April 2010 (the **Entitlement Offer Announcement**), on page 2; and

(b) an investor presentation document titled “Nufarm equity raising - \$250 million entitlement offer” dated 20 April 2010 (the **Entitlement Offer Presentation**), on page 9,

both of which were provided by Nufarm to the ASX on or about 20 April 2010 for publication on the ASX company announcements platform.

- (2) The 20 April 2010 Representation was partly express and partly implied.

(a) In so far as it was express, it was contained in:

- (i) the Entitlement Offer Announcement, including the statement on page 2 that “[i]n confirming its guidance, the company has taken account of the most recent trading conditions”; and
    - (ii) the Entitlement Offer Presentation.
  - (b) In so far as it was implied, it was to be implied as a matter of law, including by s 769C of the *Corporations Act*, and/or by reason of the facts that Nufarm:
    - (i) confirmed the FY10 Profit Forecast in an announcement of a significant equity raising undertaking and in documents which were to be provided to the ASX for release to the market; and
    - (ii) knew or ought to have known that investors and potential investors in its shares may rely upon the FY10 Profit Forecast in making decisions whether to acquire or retain shares in Nufarm.
79. The 20 April 2010 Representation was made:
- 79.1. in relation to a future matter, namely Nufarm’s operating profit for FY10;
  - 79.2. in relation to a financial product, namely Nufarm’s shares; and
  - 79.3. in trade or commerce.
80. Further to paragraph 79, at no time until 14 July 2010 did Nufarm withdraw or qualify the FY10 Profit Forecast and accordingly the 2 March 2010 Representation was a continuing representation.
81. As at 20 April 2010, Nufarm was or ought to have been aware of:
- 81.1. the matters alleged in paragraph 75 above; and
  - 81.2. of its own sales volumes and prices for the sale glyphosate in all global markets for February and March 2010 and at least part of April 2010.

#### **Particulars**

- (a) As to subparagraph 81.1, the Applicants refer to and repeat the particulars to paragraph 75 above.
- (b) As to subparagraph 81.2, Nufarm’s awareness of its glyphosate sales volumes and prices is to be inferred from the fact that it was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly, which is itself to be inferred from the statement in Nufarm’s company announcement dated 16 June 2009 that “glyphosate sales in May [2009] and through the first half of

June [2009] are tracking significantly below previous forecasts”.

82. By reason of the matters alleged in paragraph 81, Nufarm did not have reasonable grounds for making the FY10 Profit Forecast as at 20 April 2010.

#### **Particulars**

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

83. By reason of the matters alleged in paragraphs 78-82 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

83.1. s 1041H of the *Corporations Act*;

83.2. s 12DA(1) of the ASIC Act; and/or

83.3. s 9 of the FTA.

#### **(J) Monsanto’s Forecast Downgrade on 27 May 2010**

84. On 27 May 2010, Monsanto made an announcement (**Monsanto’s Forecast Downgrade**) that:

84.1. it had initiated a series of actions to reposition its Roundup business as a result of fundamental structural changes in the glyphosate industry, including “systemic margin compression in the distribution channel attributed to sustained oversupply of glyphosate and the reality that Chinese glyphosate capacity is profoundly overbuilt”;

84.2. the actions initiated included a reduction in pricing of Roundup nearer to level of generic glyphosate products;

84.3. it was reducing its previous guidance for the ongoing earnings per share (**EPS**) contribution of its Roundup business for the 2010 financial year; and

84.4. its ongoing EPS also reflected “the acute effect of an abbreviated burn-down season in the United States that limited the opportunity for sales in the third quarter”.

#### **Particulars**

Monsanto’s Forecast Downgrade was made in an announcement to the New York Stock Exchange dated 27 May 2010 titled “Monsanto Repositions Roundup Business to Address Fundamental Market Changes; Adjusts Fiscal Year 2010 Guidance”.



**(K) 28 May 2010 Representations**

85. Further or alternatively, on 28 May 2010, Nufarm:
- 85.1. confirmed its FY10 Profit Forecast; and
  - 85.2. represented that it had reasonable grounds for the FY10 Profit Forecast as at that date (the **28 May 2010 Representation**).

**Particulars**

- (1) The confirmation of the FY10 Profit Forecast and the 28 May 2010 Representation were partly express and partly to be implied.
  - (2) In so far as they were in express, they were contained in a company announcement titled “Nufarm comments on global glyphosate segment” dated 28 May 2010, which was provided by Nufarm to the ASX on or about that date for publication on the ASX company announcements platform, and in which Nufarm stated that “the adjusted earnings guidance relating to Monsanto’s glyphosate business had limited implications for Nufarm’s own business and earnings outlook.”
  - (3) In so far as they were implied, they were to be implied from the facts that:
    - (a) Nufarm had made the FY10 Profit Forecast on 2 March 2010 (in the Managing Director’s Address to the 2010 EGM) and subsequently repeated or confirmed it on 30 March 2010 (in the 30 March 2010 Representation) and 20 April 2010 (in the 20 April 2010 Representation);
    - (b) Nufarm was subject to the continuous disclosure obligations in Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act*; and
    - (c) if Nufarm had considered that Monsanto’s Forecast Downgrade would result in a material variation to its FY10 Profit Forecast, it would have been required to disclose that opinion or information to the market.
86. The 28 May 2010 Representation was made:
- 86.1. in relation to a future matter, namely Nufarm’s operating profit for FY10;
  - 86.2. in relation to a financial product, namely Nufarm’s shares; and
  - 86.3. in trade or commerce.
87. Further to paragraph 86, at no time until 14 July 2010 did Nufarm withdraw or qualify the FY10 Profit Forecast and accordingly the 28 May 2010 Representation was a continuing representation.

88. As at 28 May 2010, Nufarm was, or ought to have been, aware of:
- 88.1. the matters alleged in paragraph 81 above;
  - 88.2. Monsanto's Forecast Downgrade; and
  - 88.3. its own sales volumes and prices for the sale glyphosate in all global markets for 2Q10 and at least the first two weeks of May 2010.

**Particulars**

- (1) In relation to Nufarm's awareness of the matters alleged in paragraph 88.1, the Applicants refer to and repeat the particulars to paragraph 81 above.
  - (2) Nufarm's awareness of Monsanto's Forecast Downgrade is to be inferred from the fact that on 28 May 2010:
    - (a) it published a company announcement titled "Nufarm comments on global glyphosate segment" dated 28 May 2010 in which it referred to Monsanto's Forecast Downgrade ; and
    - (b) representatives of Nufarm conducted a telephone conference with investment analysts in which Monsanto's Forecast Downgrade was discussed.
  - (3) In relation to Nufarm's awareness of the matters alleged in paragraph 88.3, in circumstances where Nufarm:
    - (a) had made the 2 March 2010 Representation, the 30 March 2010 Representation and the 20 April Representation;
    - (b) was subject to the continuous disclosure obligations of the ASX Listing Rules and s 674(2) of the *Corporations Act*;
    - (c) was aware that the period from May to July in each financial year was its key selling period; and
    - (d) was capable of tracking sales data in respect of the sale of glyphosate by its businesses in all global markets at least as frequently as fortnightly,

Nufarm ought reasonably to have been aware of its glyphosate sales data to mid-May 2010 by 28 May 2010.
  - (4) The fact that Nufarm was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly is to be inferred from:
    - (a) the fact that it is good business practice to track closely sales of a product which was of major significance to the company's financial results; and
    - (b) the statement in Nufarm's company announcement dated 16 June 2009 that "glyphosate sales in May [2009] and through the first half of June [2009] are tracking significantly below previous forecasts".
89. By reason of the matters alleged in paragraph 88, Nufarm did not have reasonable grounds for making the FY10 Profit Forecast as at 28 May 2010.

### Particulars

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

90. By reason of the matters alleged in paragraphs 85-89 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:

90.1. s 1041H of the *Corporations Act*;

90.2. s 12DA(1) of the ASIC Act; and/or

90.3. s 9 of the FTA.

#### **(L) 28 May 2010 Continuous Disclosure Contravention**

91. Further or alternatively, by reason of the matters alleged in paragraph 88 above, Nufarm ought to have formed the Revised Profit Forecast opinion by about 28 May 2010.
92. By reason of the matters alleged in paragraphs 5-9 and 91 above, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the Revised Profit Forecast on and from 28 May 2010.
93. Notwithstanding the matters alleged in paragraphs 91-92 above, Nufarm did not notify the ASX of the Revised Profit Forecast at any time until 14 July 2010.

### Particulars

The notification of the Revised Profit Forecast was express and in writing in the FY10 Profit Forecast Downgrade.

94. By reason of the matters alleged in paragraphs 91-93 above, Nufarm contravened s 674(2) of the *Corporations Act* (the **28 May 2010 Profit Forecast Disclosure Contravention**).

#### **(M) Elders' Profit Downgrade**

95. On 22 June 2010, Elders Ltd, a supplier of glyphosate and other agricultural chemical products in Australia announced (**Elders' Profit Downgrade**) that:
- 95.1. it was downgrading its forecast underlying net operating profit after tax for the financial year ending 30 September 2010 from approximately \$55 million profit to a loss of \$8- \$14 million; and

- 95.2. it attributed the downgrade, in part, to “persistently low prices for key farm supply lines”, which it said had reduced gross margin on the sale of agricultural chemicals, including glyphosate.

#### **Particulars**

Elders’ Profit Downgrade was made in an announcement to the ASX company announcements platform on 22 June 2010.

#### **(N) 22 June 2010 Representations**

96. On 22 June 2010, Nufarm made a presentation to the JP Morgan Annual Agriculture Access Day in the course of which it:
- 96.1. confirmed its FY10 Profit Forecast; and
- 96.2. represented that it had reasonable grounds for the FY10 Profit Forecast (the **22 June 2010 Representation**).

#### **Particulars**

- (1) The confirmation of the FY10 Profit Forecast was express and in writing in an investor presentation document dated June 2010 titled “A Day at the Farm” delivered to the JP Morgan Annual Agriculture Corporate Access Day on or about 22 June 2010 (the **2010 Day at the Farm Presentation**), a copy of which was provided by Nufarm to the ASX on or about that date for publication on the ASX company announcements platform and was also published by Nufarm on its website.
- (2) The 22 June 2010 Representation was partly express and partly implied.
- (a) In so far as it was in express, it was contained in the 2010 Day at the Farm Presentation.
- (b) In so far as it was implied, it was to be implied from the facts that Nufarm:
- (i) repeated the FY10 Profit Forecast in a presentation to investment analysts and in documents which were to be provided to the ASX for release to the market; and
- (ii) knew or ought to have known that investors and potential investors in its shares may rely upon the FY10 Profit Forecast in making decisions whether to acquire or retain shares in Nufarm.
97. The 22 June 2010 Representation was made:
- 97.1. in relation to a future matter, namely Nufarm’s operating profit for FY10;
- 97.2. in relation to a financial product, namely Nufarm’s shares; and

- 97.3. in trade or commerce.
98. Further to paragraph 97, at no time until 14 July 2010 did Nufarm withdraw or qualify the FY10 Profit Forecast and accordingly the 22 June 2010 Representation was a continuing representation.
99. As at 22 June 2010, Nufarm was, or ought to have been, aware of:
- 99.1. the matters alleged in paragraph 88 above;
- 99.2. Elders' Profit Downgrade;
- 99.3. its own sales volumes and prices for the sale glyphosate in all global markets for the month of May 2010; and
- 99.4. its own sales volumes and prices for the sale glyphosate in all global markets for 2Q10, May 2010 and at least the first two weeks of June 2010.

#### **Particulars**

- (1) In relation to Nufarm's awareness of the matters alleged in paragraphs 99.1, the First Applicant refers to and repeats the particulars to paragraph 88 above.
- (2) Nufarm's awareness of Elders' Profit Downgrade is to be inferred from the fact that Elders is a competitor of Nufarm for the sale of glyphosate in Australia.
- (3) In relation to Nufarm's awareness of the matters alleged in paragraph 99.3, Nufarm's awareness of its sales volumes and prices for May 2010 is to be inferred from the statement in its letter dated 16 July 2010 to the ASX in which it stated that "financial data and other information provided by [its] Regional Managers in respect of May [2010] did not specifically indicate that there would be a departure from the Previous Guidance".
- (4) In relation to Nufarm's awareness of the matters alleged in paragraph 99.4, in circumstances where Nufarm:
- (a) had made the 2 March 2010 Representation, the 30 March 2010 Representation, the 28 May 2010 Representation and the 20 April Representation;
- (b) was subject to the continuous disclosure obligations of the ASX Listing Rules and s 674(2) of the *Corporations Act*;
- (c) was aware that the period from May to July in each financial year was its key selling period; and
- (d) was capable of tracking sales data in respect of the sale of glyphosate by its businesses in all global markets at least as frequently as fortnightly,

Nufarm ought reasonably to have been aware of its glyphosate sales data to mid-June 2010 by 22 June 2010.

- (5) The fact that Nufarm was capable of tracking sales data in respect of its glyphosate sales in all global markets at least as frequently as fortnightly is to be inferred from the matters set out in paragraph (4) of the particulars to paragraph 88 above.
100. By reason of the matters alleged in paragraph 99, Nufarm did not have reasonable grounds for making the FY10 Profit Forecast as at 22 June 2010.

#### **Particulars**

The Applicants also refer to and rely on s 769C of the *Corporations Act*, s 12BB of the ASIC Act and s 4 of the FTA.

101. By reason of the matters alleged in paragraphs 96-100 above, Nufarm engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of:
- 101.1. s 1041H of the *Corporations Act*;
- 101.2. s 12DA(1) of the ASIC Act; and/or
- 101.3. s 9 of the FTA.

#### **(O) 22 June 2010 Continuous Disclosure Contravention**

102. Further or alternatively, by reason of the matters alleged in paragraph 99 above, Nufarm ought to have formed the Revised Profit Forecast opinion by about 22 June 2010.
103. By reason of the matters alleged in paragraphs 5-9 and 102 above, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the Revised Profit Forecast on and from 22 June 2010.
104. Notwithstanding the matters alleged in paragraphs 102-103 above, Nufarm did not notify the ASX of the Revised Profit Forecast at any time until 14 July 2010.

#### **Particulars**

The notification of the Revised Profit Forecast was express and in writing in the FY10 Profit Forecast Downgrade on 14 July 2010.

105. By reason of the matters alleged in paragraphs 102-104 above, Nufarm contravened s 674(2) of the *Corporations Act* (the **22 June 2010 Profit Forecast Disclosure Contravention**).

**(P) 14 July 2010 Forecast Downgrade**

106. On 14 July 2010, Nufarm announced that its net operating profit for FY10 was now forecast to be between \$55 million and \$65 million (the **FY10 Profit Forecast Downgrade**).

**Particulars**

The FY10 Profit Forecast Downgrade was in writing in a Company Announcement titled "Nufarm Limited – Trading Update & Revision of Guidance" dated 14 July 2010 which was provided by Nufarm to the ASX on that date for publication on the ASX company announcements platform and was published by Nufarm on its website.

**(Q) 14 July 2010 Net Debt Forecast Disclosure Contravention**

107. Further to paragraph 106, on 14 July 2010, Nufarm announced that its forecast net debt at the end of FY10 was approximately \$450 million.

**Particulars**

The announcement was express and in writing in Nufarm's 14 July 2010 Profit Forecast Downgrade announcement.

108. As at 14 July 2010, Nufarm ought to have been aware that:
- 108.1. its accounts receivable cash collection cycle for 2H08 and 2H09 had on average been about 25% lower than its accounts receivable cash collection cycle for 1H08 and 1H09 respectively; and
- 108.2. the percentage decrease in its accounts receivable cash collection cycle between 1H10 and 2H10 was likely to be consistent with the percentage decrease in 2H08 and 2H09.

**Particulars**

Further particulars may be provided following discovery and inspection and the provision of expert evidence.

109. By reason of the matters alleged in paragraph 108, Nufarm ought to have formed the opinion by about 14 July 2010 that its net debt as at the end of FY10 would be approximately \$600m (the **Second Revised FY10 Net Debt Forecast**).
110. The Second Revised FY10 Net Debt Forecast was:
- 110.1. information that a reasonable person would expect to have a material effect on the price or value of the shares in Nufarm; and
- 110.2. not generally available from 14 July 2010 or before until 1 September 2010.

111. By reason of the matters alleged in paragraphs 5-9 and 107-110 above, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the Second Revised FY10 Net Debt Forecast on and from 14 July 2010.
112. Notwithstanding the matters alleged in paragraph 111 above, Nufarm did not notify the ASX of the Second Revised FY10 Net Debt Forecast at any time until 1 September 2010.
113. By reason of the matters alleged in paragraphs 107-112 above, Nufarm contravened s 674(2) of the *Corporations Act* (the **Second Net Debt Disclosure Contravention**).

**(R) The FY10 Continuous Disclosure Contravention**

114. Further or alternatively, at all times from 28 September 2009 to 14 July 2010, Nufarm ought to have been aware, for the purposes of ASX Listing Rule 19.12, that:
  - 114.1. its ability to generate sufficient profits to meet the Improved Profit Representation and/or, from 2 March 2010, the FY10 Profit Forecast depended upon a significant improvement in glyphosate demand, prices and margins in FY10 and particularly in its key selling season in 2H10;
  - 114.2. in the prevailing market conditions, Nufarm's systems did not enable it to estimate accurately the likely selling price of its glyphosate products in any of its global markets over the course of FY10 and hence it had no ability to estimate accurately the likely profitability of its glyphosate business and its business overall in FY10; and/or
  - 114.3. that at the times that it made, confirmed or repeated the Improved Profit Representation and/or, from 2 March 2010, the FY10 Profit Forecast, it did not have a reasonable basis for making either or both of those representations  
  
(individually, collectively, or in any combination, **the Material Information**).



## Particulars

- (a) Nufarm's awareness of the matters alleged in subpar 114.1 is to be inferred from the facts that:
- (i) as at 28 September 2009, Nufarm was, or ought to have been, aware of the matters alleged in par 28 above;
  - (ii) as at 26 October 2009, Nufarm was, or ought to have been, aware of the matters alleged in par 34 above;
  - (iii) as at 3 December 2009, Nufarm was, or ought to have been, aware of the matters alleged in par 42 above;
  - (iv) as at 2 March 2010, Nufarm was, or ought to have been, aware of the matters alleged in par 56 above;
  - (v) as at 30 March 2010, Nufarm was, or ought to have been, aware of the matters alleged in par 75 above,
  - (vi) as at 20 April 2010, Nufarm was, or ought to have been, aware of the matters alleged in par 81 above;
  - (vii) as at 28 May 2010, Nufarm was, or ought to have been, aware of the matters alleged in par 89 above;
  - (viii) as at 22 June 2010, Nufarm was, or ought to have been, aware of the matters alleged in par 99 above; and
  - (ix) in the circumstances referred to in subpars (a)-(g) of these particulars, it is to be inferred that, as at each of the dates referred to, in order to meet the Improved Profit Representation and/or the FY10 Profit Forecast, Nufarm's internal projections assumed or depended upon a significant improvement in glyphosate demand, prices and margins.
- (b) Nufarm's awareness of the matters alleged in subpar 114.2 on and from various dates between 28 September 2009 and 14 July 2010 is to be inferred from:
- (i) on and from 28 September 2009:
    - (A) the fact that Nufarm downgraded its forecast NPAT for FY09 on three occasions, as alleged in pars 16, 17 and 19 above, twice in the last two months of FY09 and once after the end of FY09;
    - (B) the express statement in the First FY09 Forecast Downgrade that it was not at that time (16 June 2009) possible to estimate accurately the impact of significantly lower glyphosate sales on Nufarm's year end NPAT;
    - (C) that, contrary to Nufarm's expectations, the write-down of its glyphosate inventory at the end of FY09

had been insufficient to stop further losses on the sale of glyphosate in FY10;

- (ii) in addition, on and from 3 December 2009:
  - (A) the express statements in the Chairman's Address to the 2009 AGM that Nufarm's profitability was difficult to forecast because, in addition to the normal business risks and exchange movements, extreme seasonal and climatic factors can influence performance (page 1), that trading in glyphosate had been one of the critical aspects of Nufarm's poor financial results for FY09 (page 1) and that Nufarm's market intelligence had failed to recognise conditions whereby supply rose to levels well in excess of demand (page 1); and
  - (B) the express statements in the Managing Director's Address to the 2009 AGM that the selling price of glyphosate continued to decline throughout FY09 (page 2) and that Nufarm was conscious of the uncertainties relating to both the extent and timing of anticipated improvements in a number of areas (page 4);
- (iii) Nufarm's failure to provide any specific earnings or profit guidance for FY10 until 2 March 2010, less than five months from the end of FY10; and
- (iv) at all times, Nufarm's financial reporting systems did not operate to give it sufficiently up to date information on its financial performance and on current market conditions to enable it to have a more precise view of its likely financial results.

115. The Material Information was:

115.1. information that a reasonable person would expect to have a material effect on the price or value of the shares in Nufarm; and

115.2. not generally available.

116. By reason of the matters alleged in paragraphs 5-9 and 114-115, Nufarm was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the Material Information on and from 28 September 2009.

117. Notwithstanding the matters alleged in paragraphs 114-116, Nufarm did not notify the ASX of the Material Information at any time during the Relevant Period.

118. By reason of the matters alleged in paragraphs 114-117, Nufarm contravened s 674(2) of the *Corporations Act* (the **FY10 Continuous Disclosure Contravention**) throughout the Relevant Period.

**(S) 1 September 2010 Net Debt Corrective Disclosure**

119. On 1 September 2010, Nufarm announced that its net debt as at the end of FY10 was approximately \$620 million (the **FY10 Net Debt Corrective Disclosure**).

**Particulars**

The Net Debt Corrective Disclosure was in writing in a Company Announcement titled “Nufarm Limited – Market Update” dated 1 September 2010 which was provided by Nufarm to the ASX on that date for publication by the ASX on its company announcements platform and was published by Nufarm on its website.

**LOSS AND DAMAGE**

120. During the Relevant Period, the Applicants and each of the Group Members acquired [an interest](#) shares in Nufarm:
- 120.1. in a market regulated by, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the *Corporations Act*;
  - 120.2. in a market where the price or value of Nufarm’s shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and sections 674(2) and 1041H of the *Corporations Act*; and
  - 120.3. in a market to which the representations alleged in this [Further Amended Consolidated Statement](#) of [Celaim](#) had been made that a reasonable person would expect to have a material effect on the price or value of Nufarm’s shares; and/or
  - 120.4. further or alternatively to subparagraph 120.3, in a market to which the material information alleged in this [Further Amended Consolidated Statement](#) of [Celaim](#) had not been disclosed and which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of Nufarm’s shares.

**Particulars**

Particulars of the Applicants’ shareholdings are set in Annexure A to this statement of claim.

Particulars of the shareholdings of the Group Members will be provided following the trial of the common questions.

121. Further to paragraph 120, on 13 July 2010, the closing price of Nufarm's shares was \$5.24 per share.
122. On 14 July 2010, at the request of Nufarm, trading in Nufarm's shares on the ASX was halted from the commencement of trading pending an announcement concerning a trading update by Nufarm and remained suspended for the duration of the day.
123. During 14 July 2010, Nufarm announced its FY10 Profit Forecast Downgrade.
124. Trading in Nufarm's shares on the ASX resumed on 15 July 2010 and on and from that day Nufarm's share price declined significantly.

#### **Particulars**

Nufarm's share price:

- (a) on 15 July 2010, fell to a low of \$3.68 per share on 15 July 2010 and closed at \$3.75 per share;
- (b) on 16 July 2010, fell to a low of \$3.40 per share and closed at \$3.40 per share on 16 July 2010; and
- (c) on 19 July 2010, fell to a low of \$3.20 per share and closed at \$3.25 per share.

Nufarm's share price history for the whole of the Relevant Period is set out in Annexure B to this statement of claim.

125. On 31 August 2010, the closing price of Nufarm's shares was \$3.85 per share.
126. On 1 September 2010, Nufarm announced its FY10 Net Debt Corrective Disclosure.

#### **Particulars**

The Applicants refer to and repeat the particulars to par 119 above.

127. On and from 1 September 2010, Nufarm's share price declined significantly.

#### **Particulars**

Nufarm's share price:

- (a) on 1 September 2010, fell to a low of \$3.48 per share and closed at \$3.59 per share;
- (b) on 2 September 2010, fell to a low of \$3.48 per share and closed at \$3.50 per share; and
- (c) on 3 September 2010, fell to a low of \$3.34 per share and closed at \$3.39 per share.

Nufarm's share price history for the whole of the Relevant Period is set out in Annexure B to this statement of claim.

128. By reason of the matters alleged in paragraphs 120-127, the making of:
- 128.1. either or both of the 28 September 2009 Representations;
  - 128.2. the 26 October 2009 Representation;
  - 128.3. the 3 December 2009 Representation;
  - 128.4. the FY10 Profit Forecast;
  - 128.5. the 2 March 2010 Representation;
  - 128.6. the 2 March 2010 Revised Profit Forecast Disclosure Contravention;
  - 128.7. the First Net Debt Forecast Disclosure Contravention;
  - 128.8. the 30 March 2010 Representation;
  - 128.9. the 20 April 2010 Representation;
  - 128.10.the 28 May 2010 Representation;
  - 128.11.the 28 May 2010 Revised Profit Forecast Disclosure Contravention;
  - 128.12.the 22 June 2010 Representation;
  - 128.13.the 22 June 2010 Profit Forecast Disclosure Contravention;
  - 128.14.the Second Net Debt Forecast Disclosure Contravention; and
  - 128.15.the FY10 Continuous Disclosure Contravention
- (individually, collectively or in any combination, the **Contravening Conduct**) separately or together or in any combination caused the market price for Nufarm's shares to be materially higher during the Relevant Period than:
- 128.16.its true price; and/or
  - 128.17.alternatively, the price that would have prevailed if that Contravening Conduct had not occurred.

#### **Particulars**

That the Contravening Conduct caused Nufarm's share price to be higher during the Relevant Period than it would have been had it not occurred is to be inferred from the matters alleged in paragraphs 121-127 above.

129. The Applicants and each of the Group Members acquired [an interest in](#) shares in Nufarm during the Relevant Period on the assumption generally

made in the market and on which they were entitled to act that the price at which they acquired them represented the market price in a market had been informed of all material information relating to Nufarm (the **Market Price**).

#### **Particulars**

- (1) Investors in shares on the ASX are generally aware that there is a complex and comprehensive regulatory regime including, inter alia, the ASX Listing Rules and sections 674(2) and 1041H of the *Corporations Act*, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which shares are traded.
- (2) If the Contravening Conduct had not occurred, the Applicants and the Group Members would either have bought Nufarm shares at a price which had not been artificially inflated or they would have acquired shares in another listed entity instead.

130. Alternatively, the Group Members who acquired [an interest in](#) shares pursuant to the Entitlement Offer did so on the assumption generally made in the market and on which they were entitled to act that the price at which they acquired them represented a discount to the Market Price.

131. Further or alternatively, the First Applicant and some of the Group Members acquired [an interest in](#) shares in Nufarm during the Relevant Period in reliance upon one or more of:

131.1. either or both of the 28 September 2009 Representations;

131.2. the 26 October 2009 Representation;

131.3. the 3 December 2009 Representation;

131.4. the FY10 Profit Forecast;

131.5. the 2 March 2010 Representation;

131.6. the 30 March 2010 Representation;

131.7. the 20 April 2010 Representation;

131.8. the 28 May 2010 Representation; and

131.9. the 22 June 2010 Representation

(individually, collectively or in any combination, the **Representations**).

#### **Particulars**

- (1) The First Applicant read and relied upon the FY10 Half Year Report to Shareholders in making his initial decision to purchase shares in Nufarm on and from 1 April 2010.

- (2) Particulars of reliance for the remaining Group Members who relied directly on any of the Representations will be provided following the resolution of the common questions.

132. If Nufarm had not engaged in the Contravening Conduct, the Applicants and the Group Members would either have:

132.1. acquired [an interest in](#) shares in Nufarm at a lower price; or

132.2. retained or acquired [an interest in](#) shares in another listed entity instead.

#### Particulars

Particulars of the alternative investments referred to in subparagraph 132.2 will be provided prior to trial.

133. By reason of Nufarm's Contravening Conduct, the Applicants and each of the Group Members have suffered loss and damage.

#### Particulars

The loss suffered by the Applicants and Group Members is the greater of:

- (a) the difference between the price at which they acquired their [an interest in](#) shares in Nufarm during the Relevant Period and the price at which the shares would have traded at that time had the Contravening Conduct not occurred (the **Price Inflation**). Particulars of the Price Inflation in relation to Nufarm's share price at the relevant times will be provided following the provision of expert evidence; or
- (b) alternatively, the difference between the price at which they acquired their [an interest in](#) shares in Nufarm during the Relevant Period and whatever is "left in hand" or was realised upon a sale of those shares following Nufarm's 2 March 2010 Representation, its FY10 Profit Forecast Downgrade on 14 July 2010 or its FY10 Net Debt Corrective Disclosure on 1 September 2010, modified to take into account so much, if any, of the movement in the traded price of Nufarm's shares which did not result from the Contravening Conduct; or
- (c) alternatively, for days during the Relevant Period where the traded price of Nufarm's shares fell as a result of the disclosure of information which had not previously been disclosed because of the Contravening Conduct, the quantum of that fall;
- (d) alternatively, for the First Applicant and those Group Members who would have, but for the Contravening Conduct, retained or acquired an alternative investment, the difference, at the date of hearing, between their actual position as a result of having acquired [an interest in](#) shares in Nufarm during the Relevant Period and the position in which they would have been had they made that alternative investment.

134. By reason of the matters alleged in paragraphs 120-133 above, the Applicants and each of the Group Members may recover the amount of the loss and damage suffered by them from Nufarm pursuant to s 1041I of the *Corporations Act*, s 12GF of the ASIC Act and/or s 159 of the FTA.
135. Further or alternatively, by reason of the matters alleged in paragraphs 120-133 above, Nufarm is obliged pursuant to s 1317HA of the *Corporations Act* to compensate the Applicant and the Group Members for the damage that resulted from its contravention of s 674(2).

AND THE APPLICANTS CLAIM, for themselves and on behalf of the Group Members, the relief set out in the Application.

This pleading was prepared by Michael Lee and Alistair Pound of counsel, Benjamin Phi of Slater & Gordon and Jason Geisker of Maurice Blackburn and settled by Julian Burnside of Queens Counsel.

DATED: [12-11 September 2011-2012](#)



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## ANNEXURE A

### PARTICULARS OF THE APPLICANTS' SHAREHOLDINGS IN NUFARM DURING THE RELEVANT PERIOD

1. The First Applicant acquired an interest in Nufarm's shares as outlined in the following table:

Date of Purchase	Number of NUF securities	Average price per security (\$)	Amount paid (not incl. brokerage) (\$)	Brokerage (\$)	GST on brokerage (\$)	Amount paid (incl. brokerage) (\$)
1 April 2010	75,000	8.34935	626,201.25	626.20	62.62	626,890.07
8 April 2010	30,000	8.27	248,100.00	248.1	24.81	248,372.91
12 April 2010	15,000	8.15	122,250.00	122.25	12.23	122,384.48
12 April 2010	15,000	8.137475	122,062.13	122.06	12.21	122,196.40
5 May 2010	100,000	7.11	711,000.00	711.00	71.10	711,782.10
8 June 2010	20,019	5.65	113,107.35	113.11	11.31	113,231.77
8 June 2010	13,218	5.78	76,400.04	76.40	7.64	76,484.08
8 June 2010	20,000	5.81	116,200.00	116.20	11.62	116,327.82
Total	288,237		2,135,320.77	2,135.32	213.54	2,137,669.63

The First Applicant disposed of its interest in NUF shares acquired during the Relevant Period as outlined in the following table:

Date of Sale	Number of NUF securities	Average price per security (\$)	Trade value (not incl. brokerage) (\$)	Brokerage (\$)	GST on brokerage (\$)	Net proceeds (incl. brokerage) (\$)
21 May 2010	13,000	5.80	75,400.00	75.40	7.54	75,317.06
21 May 2010	15,000	5.815405	87,231.08	87.23	8.72	87,135.13
21 May 2010	58,000	5.830809	338,186.92	338.19	33.82	337,814.91
8 June 2010	20,019	5.708878	114,286.03	114.29	11.43	114,160.31
17 June 2010	33,218	5.913222	196,425.41	196.43	19.64	196,209.34
16 July 2010	80,000	3.524748	281,979.84	281.98	28.20	281,669.66

16 July 2010	20,000	3.529789	70,595.78	70.60	7.06	70,518.12
16 July 2010	25,000	3.520823	88,020.58	88.02	8.80	87,923.76
20 July 2010	51,000	3.333849	170,026.30	170.03	17.00	169,839.27
Total	295,237		1,422,151.94	1422.17	142.21	1,420,587.44

2. The Second Applicant acquired an interest in Nufarm's shares as outlined in the following table:

Date of Purchase	Number of NUF securities	Average price per security (\$)	Amount paid (not incl. brokerage) (\$)	Brokerage (\$)	GST on brokerage (\$)	Amount paid (incl. brokerage) (\$)
8 January 2010	6,000	10.77376 2	64,642.57	72.29	7.23	64,722.09
14 April 2010	3,000	7.40	22,200.00	29.00	2.90	22,231.90
14 April 2010	3,000	7.37	22,110.00	29.00	2.90	22,141.90
27 May 2010	2,400	5.75	13,800.00	-	-	13,800.00
Total	14,400		122,752.57	130.29	130.3	122,895.89

The Second Applicant disposed of its interest in NUF shares acquired during the Relevant Period as outlined in the following table:

Date of Sale	Number of NUF securities	Average price per security (\$)	Trade value (not incl. brokerage) (\$)	Brokerage (\$)	GST on brokerage (\$)	Net proceeds (incl. brokerage) (\$)
26 May 2010	3,000	6.03	18,090.00	29.00	2.90	18,058.10
Total	3,000		18,090.00	29.00	2.90	18,058.10

3. The Third and Fourth Applicants acquired an interest in Nufarm's shares as outlined in the following table:

<b>Date of Purchase</b>	<b>Number of NUF securities</b>	<b>Average price per security (\$)</b>	<b>Amount paid (not incl. brokerage) (\$)</b>	<b>Brokerage (\$)</b>	<b>GST on brokerage (\$)</b>	<b>Amount paid (incl. brokerage) (\$)</b>
11 August 2010	4,000	4.10	16,400.00	164.00	16.40	16,580.40

The Third and Fourth Applicants disposed of their interest in NUF shares acquired during the Relevant Period as outlined in the following table:

<b>Date of Sale</b>	<b>Number of NUF securities</b>	<b>Average price per security (\$)</b>	<b>Trade value (not incl. brokerage) (\$)</b>	<b>Brokerage (\$)</b>	<b>GST on brokerage (\$)</b>	<b>Net proceeds (incl. brokerage) (\$)</b>
12 October 2010	4,000	4.20	16,800.00	168.00	16.80	16,615.20

## ANNEXURE B

### CHRONOLOGY OF NUFARM'S SHARE PRICE HISTORY DURING THE RELEVANT PERIOD\*

Date	Open (\$)	High (\$)	Loaw (\$)	Close (\$)
28-Sep-09	12	12.22	11.81	11.96
29-Sep-09	11.8	11.81	11.43	11.45
30-Sep-09	11.51	11.58	11.3	11.35
1-Oct-09	11.35	11.44	11.34	11.4
2-Oct-09	11.3	11.46	11.3	11.4
5-Oct-09	11.32	11.48	11.31	11.43
6-Oct-09	11.5	11.57	11.45	11.52
7-Oct-09	11.6	11.72	11.55	11.7
8-Oct-09	11.7	11.78	11.61	11.7
9-Oct-09	11.72	11.74	11.58	11.59
12-Oct-09	11.55	11.55	11.37	11.42
13-Oct-09	11.43	11.58	11.42	11.5
14-Oct-09	11.45	11.93	11.45	11.8
15-Oct-09	11.8	11.8	11.6	11.7
16-Oct-09	11.75	11.75	11.61	11.65
19-Oct-09	11.62	11.64	11.54	11.6
20-Oct-09	11.65	11.73	11.54	11.73
21-Oct-09	11.67	11.75	11.6	11.75
22-Oct-09	11.69	11.8	11.65	11.8
23-Oct-09	11.8	11.88	11.77	11.87
26-Oct-09	11.84	11.85	11.75	11.8
27-Oct-09	11.7	11.8	11.63	11.8
28-Oct-09	11.8	11.85	11.63	11.65
29-Oct-09	11.47	11.55	11.25	11.4
30-Oct-09	11.45	11.64	11.41	11.56
2-Nov-09	11.4	11.49	11.33	11.49
3-Nov-09	11.46	11.69	11.39	11.63
4-Nov-09	11.62	11.64	11.5	11.6
5-Nov-09	11.51	11.6	11.41	11.41
6-Nov-09	11.47	11.65	11.46	11.65
9-Nov-09	11.64	11.94	11.53	11.9
10-Nov-09	11.85	11.88	11.65	11.72
11-Nov-09	11.79	11.97	11.72	11.91
12-Nov-09	11.83	11.98	11.83	11.96
13-Nov-09	11.85	11.92	11.81	11.82
16-Nov-09	11.88	11.89	11.82	11.88
17-Nov-09	11.85	11.86	11.81	11.84
18-Nov-09	11.86	11.92	11.83	11.84
19-Nov-09	11.91	12.06	11.9	12
20-Nov-09	11.95	11.99	11.86	11.9
23-Nov-09	11.88	11.97	11.88	11.94
24-Nov-09	11.98	11.98	11.91	11.91
25-Nov-09	11.85	11.85	11.65	11.7

\* As provided by the ASX

26-Nov-09	11.7	11.72	11.6	11.7
27-Nov-09	11.55	11.69	11.3	11.57
30-Nov-09	11.66	11.68	11.5	11.6
1-Dec-09	11.53	11.57	11.16	11.24
2-Dec-09	10.48	10.83	10.4	10.51
3-Dec-09	10.53	10.87	10.53	10.85
4-Dec-09	10.85	10.86	10.75	10.79
7-Dec-09	10.85	10.85	10.7	10.72
8-Dec-09	10.71	10.77	10.62	10.75
9-Dec-09	10.73	10.88	10.67	10.87
10-Dec-09	10.91	10.93	10.79	10.81
11-Dec-09	10.86	10.86	10.78	10.85
14-Dec-09	10.84	10.85	10.77	10.8
15-Dec-09	10.8	10.82	10.66	10.68
16-Dec-09	10.62	10.71	10.59	10.67
17-Dec-09	10.69	10.79	10.51	10.64
18-Dec-09	10.62	11.38	10.53	11.1
21-Dec-09	11.1	11.1	10.52	10.56
22-Dec-09	0	0	0	0
29-Dec-09	10.4	11.1	10.4	10.86
30-Dec-09	10.95	10.95	10.82	10.87
31-Dec-09	10.89	10.92	10.88	10.89
4-Jan-10	10.89	10.93	10.83	10.89
5-Jan-10	10.89	10.9	10.77	10.84
6-Jan-10	10.81	10.81	10.67	10.75
7-Jan-10	10.8	10.81	10.7	10.7
8-Jan-10	10.72	10.79	10.7	10.75
11-Jan-10	10.79	10.8	10.74	10.8
12-Jan-10	10.77	10.85	10.77	10.85
13-Jan-10	10.7	10.81	10.7	10.75
14-Jan-10	10.77	10.78	10.68	10.68
15-Jan-10	10.64	10.73	10.58	10.63
18-Jan-10	10.61	10.67	10.6	10.64
19-Jan-10	10.61	10.63	10.51	10.55
20-Jan-10	10.54	10.6	10.41	10.5
21-Jan-10	10.41	10.46	10.15	10.4
22-Jan-10	10.3	10.48	10.08	10.36
25-Jan-10	10.2	10.35	10.2	10.28
27-Jan-10	10.25	10.35	10.12	10.19
28-Jan-10	10.16	10.23	10.11	10.2
29-Jan-10	10.1	10.34	10.09	10.18
1-Feb-10	10.12	10.15	9.6	9.73
2-Feb-10	9.8	9.98	9.74	9.97
3-Feb-10	10	10.17	9.96	10.15
4-Feb-10	10.05	10.1	9.91	10.1
5-Feb-10	9.85	9.9	9.7	9.7
8-Feb-10	9.74	9.82	9.59	9.59
9-Feb-10	9.55	9.6	9.32	9.6
10-Feb-10	9.64	9.81	9.57	9.68
11-Feb-10	9.73	9.74	9.56	9.6
12-Feb-10	9.64	9.64	9.51	9.53
15-Feb-10	9.49	9.68	9.49	9.55

16-Feb-10	9.6	9.77	9.56	9.65
17-Feb-10	9.77	9.99	9.72	9.92
18-Feb-10	9.95	10.02	9.89	9.97
19-Feb-10	9.93	10.08	9.85	10.02
22-Feb-10	10.14	10.14	9.97	10.03
23-Feb-10	10.07	10.18	10.02	10.15
24-Feb-10	10.07	10.21	9.95	10.21
25-Feb-10	10.17	10.17	9.92	9.98
26-Feb-10	9.94	9.94	9.71	9.73
1-Mar-10	9.81	9.9	9.71	9.75
2-Mar-10	9.5	9.57	8.96	9.47
3-Mar-10	9.3	9.33	9.16	9.28
4-Mar-10	9.2	9.23	9.14	9.18
5-Mar-10	9.16	9.26	9.03	9.03
8-Mar-10	9.13	9.22	9.03	9.07
9-Mar-10	9.2	9.33	9.09	9.2
10-Mar-10	8.4	8.58	8.28	8.38
11-Mar-10	8.43	8.5	8.4	8.43
12-Mar-10	8.5	8.77	8.44	8.7
15-Mar-10	8.71	8.78	8.57	8.63
16-Mar-10	8.6	8.64	8.53	8.61
17-Mar-10	8.63	8.75	8.63	8.75
18-Mar-10	8.85	8.85	8.74	8.8
19-Mar-10	8.82	8.82	8.76	8.78
22-Mar-10	8.77	8.8	8.73	8.76
23-Mar-10	8.8	8.88	8.79	8.8
24-Mar-10	8.82	8.84	8.75	8.8
25-Mar-10	8.77	8.77	8.65	8.71
26-Mar-10	8.7	8.75	8.66	8.75
29-Mar-10	8.8	8.8	8.63	8.68
30-Mar-10	8.55	8.55	8.12	8.12
31-Mar-10	8.13	8.31	8.13	8.23
1-Apr-10	8.36	8.38	8.16	8.19
6-Apr-10	8.19	8.31	8.19	8.28
7-Apr-10	8.3	8.36	8.23	8.36
8-Apr-10	8.35	8.35	8.22	8.23
9-Apr-10	8.29	8.29	8.22	8.27
12-Apr-10	8.3	8.3	7.83	7.86
13-Apr-10	7.85	7.85	7.49	7.53
14-Apr-10	7.51	7.56	7.35	7.35
15-Apr-10	7.45	7.55	7.4	7.52
16-Apr-10	7.55	7.78	7.52	7.74
19-Apr-10	7.66	7.77	7.64	7.75
23-Apr-10	7.29	7.3	7.12	7.12
27-Apr-10	7.16	7.23	7.16	7.18
28-Apr-10	7.12	7.4	7.08	7.4
29-Apr-10	7.42	7.48	7.36	7.47
30-Apr-10	7.52	7.64	7.47	7.64
3-May-10	7.6	7.6	7.42	7.44
4-May-10	7.4	7.51	7.14	7.25
5-May-10	7.12	7.34	7.01	7.2
6-May-10	7.18	7.18	7.05	7.12

7-May-10	6.82	7.27	6.62	7.18
10-May-10	7.18	7.28	7.06	7.08
11-May-10	7.13	7.15	6.75	6.75
12-May-10	6.28	6.67	6.24	6.5
13-May-10	6.6	6.78	6.58	6.69
14-May-10	6.61	6.69	6.56	6.63
17-May-10	6.55	6.59	6.31	6.33
18-May-10	6.43	6.43	6.25	6.3
19-May-10	6.25	6.27	6.14	6.23
20-May-10	6.08	6.13	5.91	5.95
21-May-10	5.75	5.94	5.73	5.87
24-May-10	5.82	5.9	5.63	5.87
25-May-10	5.84	5.85	5.65	5.75
26-May-10	6.05	6.15	5.84	6
27-May-10	6	6.06	5.86	5.95
28-May-10	5.82	6.18	5.77	6
31-May-10	5.99	6.13	5.96	6.08
1-Jun-10	6	6.05	5.91	6.05
2-Jun-10	5.85	6	5.84	5.94
3-Jun-10	5.94	6.06	5.91	6
4-Jun-10	5.95	6.03	5.84	5.87
7-Jun-10	5.75	5.79	5.56	5.58
8-Jun-10	5.62	5.82	5.61	5.65
9-Jun-10	5.75	5.75	5.54	5.58
10-Jun-10	5.6	5.75	5.6	5.74
11-Jun-10	5.85	5.95	5.76	5.8
15-Jun-10	5.89	5.89	5.77	5.81
16-Jun-10	5.9	5.92	5.83	5.9
17-Jun-10	5.82	6.02	5.82	6
18-Jun-10	5.99	5.99	5.91	5.99
21-Jun-10	5.98	6.07	5.95	6
22-Jun-10	5.87	5.89	5.6	5.7
23-Jun-10	5.61	5.65	5.5	5.5
24-Jun-10	5.52	5.55	5.38	5.49
25-Jun-10	5.41	5.46	5.31	5.37
28-Jun-10	5.31	5.32	5.04	5.2
29-Jun-10	5.12	5.51	5.12	5.43
30-Jun-10	5.27	5.44	5.18	5.39
1-Jul-10	5.38	5.59	5.27	5.31
2-Jul-10	5.28	5.42	5.28	5.41
5-Jul-10	5.35	5.37	5.2	5.26
6-Jul-10	5.2	5.32	5.15	5.32
7-Jul-10	5.28	5.3	5.2	5.25
8-Jul-10	5.4	5.43	5.28	5.33
9-Jul-10	5.33	5.35	5.28	5.35
12-Jul-10	5.36	5.4	5.33	5.35
13-Jul-10	5.38	5.38	5.21	5.24
15-Jul-10	4.1	4.11	3.68	3.75
16-Jul-10	3.66	3.77	3.4	3.4
19-Jul-10	3.4	3.4	3.2	3.25
20-Jul-10	3.29	3.46	3.27	3.42
21-Jul-10	3.5	3.57	3.46	3.56

22-Jul-10	3.52	3.65	3.48	3.61
23-Jul-10	3.67	3.83	3.64	3.76
26-Jul-10	3.79	3.83	3.73	3.76
27-Jul-10	3.79	3.8	3.72	3.79
28-Jul-10	3.79	3.8	3.69	3.78
29-Jul-10	3.7	3.77	3.7	3.76
30-Jul-10	3.76	3.85	3.72	3.82
2-Aug-10	3.83	3.87	3.78	3.82
3-Aug-10	3.8	3.88	3.8	3.88
4-Aug-10	3.86	3.93	3.82	3.85
5-Aug-10	3.91	3.95	3.89	3.94
6-Aug-10	3.95	4.02	3.87	4
9-Aug-10	4.02	4.16	4.02	4.16
10-Aug-10	4.15	4.28	4.12	4.2
11-Aug-10	4.17	4.2	3.92	3.96
12-Aug-10	3.88	3.96	3.8	3.88
13-Aug-10	3.89	4.04	3.86	4.03
16-Aug-10	3.98	4.18	3.98	4.15
17-Aug-10	4.12	4.14	4.05	4.1
18-Aug-10	4.2	4.24	4.03	4.08
19-Aug-10	4.04	4.09	3.98	4.01
20-Aug-10	4.03	4.17	4	4.07
23-Aug-10	4.06	4.08	3.94	3.98
24-Aug-10	3.93	3.96	3.85	3.93
25-Aug-10	3.87	3.91	3.74	3.76
26-Aug-10	3.78	3.86	3.75	3.78
27-Aug-10	3.77	3.82	3.73	3.81
30-Aug-10	3.84	3.96	3.83	3.93
31-Aug-10	3.9	3.92	3.84	3.85
1-Sep-10	3.6	3.76	3.48	3.59



## **Annexure C – DEFINITIONS**

- 1H10 Financial Results Disclosure Contravention is defined in paragraph 51
- 2 March 2010 Profit Forecast Disclosure Contravention is defined in paragraph 63
- 2 March 2010 Representation is defined in paragraph 53
- 3 December 2009 Representation is defined in paragraph 39
- 20 April 2010 Representation is defined in paragraph 78.2
- 22 June 2010 Profit Forecast Disclosure Contravention is defined in paragraph 105
- 22 June 2010 Representation is defined in paragraph 96.2
- 26 October 2009 Representation is defined in paragraph 32
- 28 May 2010 Profit Forecast Disclosure Contravention is defined in paragraph 94
- 28 May 2010 Representation is defined in paragraph 85.2
- 28 September 2009 Representations is defined in paragraph 23
- 30 March 2010 Representation is defined in paragraph 72
- 2010 Day at the Farm Presentation is defined in the particulars to paragraph 96
- AGM means Annual General Meeting
- ASIC Act is defined in paragraph 4.5
- ASX is defined in paragraph 4.2
- ASX Listing Rules means the Listing Rules of the Australian Securities Exchange
- Chairman's Address to the 2009 AGM is defined in paragraph 37
- Contravening Conduct is defined in paragraph 128
- EGM means Extraordinary General Meeting
- Elders Profit Downgrade is defined in paragraph 95
- Entitlement Offer is defined in paragraph 78
- Entitlement Offer Announcement is defined in the particulars to paragraph 78
- Entitlement Offer Presentation is defined in the particulars to paragraph 78
- EPS is defined in paragraph 84.3
- First FY09 Forecast Downgrade is defined in paragraph 16
- First Net Debt Disclosure Contravention is defined in paragraph 70

First Revised FY10 Net Debt Forecast is defined in paragraph 66

FY09 Annual Report is defined in paragraph 31

FY09 End of Year Briefing Presentation is defined in paragraph 20

FY09 Preliminary Final Report is defined in paragraph 20

FY09 Preliminary Half Year Report is defined in paragraph 15

FY10 Continuous Disclosure Contravention is defined in paragraph 118

FY10 Half Year Report to Shareholders is defined in the particulars to paragraph 71

FY10 Interim Results Presentation is defined in the particulars to paragraph 71

FY10 Net Debt Corrective Disclosure is defined in paragraph 119

FY10 Profit Forecast is defined in paragraph 52.6

FY10 Profit Forecast Downgrade is defined in paragraph 106

Group Members is defined in paragraph 3

Improved Profit Representation is defined in paragraph 23.2

Inventory Representation is defined in paragraph 23.1

Managing Director's Address to the 2009 AGM is defined in paragraph 38

Managing Director's Address to the 2010 EGM is defined in paragraph 52

Market Conditions during August and September 2009 is defined in paragraph 26

Market Conditions during FY08 and FY09 is defined in paragraph 28.1

Market Conditions during October and November 2009 is defined in paragraph 41

Market Price is defined in paragraph 129

Material Information is defined in paragraph 114

Monsanto's Forecast Downgrade is defined in paragraph 84

Monsanto's Roundup Price reduction is defined in paragraph 27

NPAT is defined in paragraph 12.1

Nufarm's Financial Performance during 1H10 is defined in paragraph 45

Nufarm's global markets is defined in paragraph 9.2

Nufarm's glyphosate business is defined in paragraph 10

Nufarm's Likely 1H10 Financial Result is defined in paragraph 46

Price Inflation is defined in the particulars to paragraph 133

Relevant Date is defined in paragraph 46

Relevant Period is defined in paragraph 3.1

Representations is defined in paragraph 130

Revised Profit Forecast is defined in paragraph 59

Second FY09 Forecast Downgrade is defined in paragraph 17

Second Net Debt Disclosure Contravention is defined in paragraph 113

Second Revised FY10 Net Debt Forecast is defined in paragraph 109

Third FY09 Forecast Downgrade is defined in paragraph 19

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

(P) NSD 1847 of 2010

**GABY HADCHITI and Others**

Applicants

and

**NUFARM LIMITED (ACN 091 323 312)**

Respondent

### CERTIFICATE OF LAWYER

We, Benjamin Phi and Ben Slade, certify to the Court that, in relation to the [Further Amended Consolidated s](#)Statement of [Celaim](#) filed on behalf of the Applicants, the factual and legal material available to us at present provides a proper basis for each allegation in the pleading.

Date: ~~12 August 2011~~ [11 September 2012](#)



**Benjamin Phi**

Lawyer for the First, Third and Fourth Applicants



**Ben Slade**

Lawyer for the Second Applicants

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Filed on behalf of Gaby Hadchiti and Others, the Applicants

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## Schedule

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

(P) NSD 1847 of 2010

### Applicants

Second Applicant	Verbatt Pty Ltd (ACN 116 145 834) (as trustee of the Verbatt Trust)
Third Applicant and Fourth Applicants	Graham and Susan Roney

| Date: ~~12 August 2011~~ 11 September 2012