

Darwalla Milling Company Pty Ltd & Ors v F. Hoffmann-La Roche Ltd & Ors

Federal Court of Australia No.V359 of 1999

SETTLEMENT DISTRIBUTION SCHEME

1. OVERVIEW

- 1.1. This settlement distribution scheme ("**Settlement Scheme**") establishes a procedure for the distribution of funds received from the Respondents pursuant to a settlement of this proceeding approved by the Court ("**Settlement**").
- 1.2. In summary, the Settlement Scheme provides for:
- (a) The division of the Settlement Distribution Fund into two funds;
 - (b) The administration of the claims;
 - (c) The deadline for submission of the Proofs of Claim;
 - (d) The types of claims able to be made under the Settlement Scheme;
 - (e) The assessment of claims made under the Settlement Scheme;
 - (f) The treatment of interest accruing on the settlement funds;
 - (g) Review of assessments of Claims;
 - (h) The timing of payments to Applicants and Group Members; and
 - (i) A disputes resolution process.

2. SETTLEMENT AMOUNT

Settlement Funds

- 2.1. The Respondents have without admission paid the sum of \$30.5m for distribution to the Group Members ("**Settlement Sum**") and \$10.5m representing the Applicants' legal costs and disbursements ("**Settlement Costs**"), into an interest bearing account (the "**Settlement Reserve Fund**"). Representatives from the solicitors for each party to this proceeding are the signatories to the account.

- 2.2. Within seven days of the date of approval by the Court of the Settlement, the sums held in the Settlement Reserve Fund will be paid as follows:
- (a) The Settlement Sum, together with any interest which accrues thereon while in the Settlement Reserve Fund, will be paid into an interest-bearing account to which Bernard Murphy and Kim Parker of the Applicants' solicitors, Maurice Blackburn Cashman Pty Ltd ("**MBC**") are signatories (the "**Settlement Distribution Fund**"); and
 - (b) The Settlement Costs, together with any interest that accrues thereon while in the Settlement Reserve Fund, will be paid to MBC.

3. SETTLEMENT DISTRIBUTION FUND

Division Into Two Funds

- 3.1. Upon approval of the Settlement, all payments under Clause 7 will be deducted from the Settlement Distribution Fund.
- 3.2. The balance of the Settlement Distribution Fund will be divided as follows:
- (a) 7/30.5 of the Settlement Distribution Fund will be allocated to the "**Loss of Market Share Fund**"; and
 - (b) 23.5/30.5 of the Settlement Distribution Fund will be allocated to the "**Overcharge Fund**".

4. CLAIMS ADMINISTRATION

- 4.1. MBC will administer claims made under Clauses 5 and 6 of the Settlement Scheme. In doing so, MBC will act as lawyers working as the claims administrator with an obligation to do so properly on behalf of the Group Members as a whole, and not as the lawyer for any individual Group Member.
- 4.2. Persons who are excluded from making a claim under the Settlement Scheme are:
- (a) Respondents to this proceeding or their related bodies corporate (as defined in Section 50 of the *Corporations Act 2001 (Cth)*) ("**Related Bodies Corporate**"); and
 - (b) Group Members to or for whom the Respondent or their Related Bodies Corporate have provided, other than under the Settlement Scheme, any

payment, benefit or other advantage, including without limitation any discount, allowance, rebate, or credit in relation to goods acquired, on account of or in connection with any claim, or potential claim, arising out of the subject of this proceeding.

- 4.3. Each Group Member making a claim under Clause 5 or 6 ("**Claimant**") must submit a Proof of Claim to MBC in the form set out in Schedule A no later than 60 days following notification of the Settlement Scheme pursuant to an order of the Court approving Settlement. The Proof of Claim must be served on MBC in accordance with the notice provisions set out in Clause 12.
- 4.4. A Group Member who does not submit a Proof of Claim within 60 days following notification pursuant to the order of the Court approving Settlement is not entitled to claim under the Settlement Scheme.
- 4.5. Each Proof of Claim must be submitted with:
 - (a) Such invoices, business, financial or other records, which will prove the claim made by the Claimant on the balance of probabilities. Where any such records do not exist, or are no longer in the possession of the Claimant, the Claimant must provide a written explanation in the Proof of Claim as to why they do not exist or are no longer in the possession of the Claimant; and
 - (b) A statutory declaration made by an authorised representative of the Claimant verifying the accuracy of the Proof of Claim and the information provided under Clause 4.5(a).
- 4.6. If the information provided by the Claimant is insufficient to enable MBC to complete the claims assessment, MBC may require the Claimant to provide and verify additional information to support any claim or part thereof upon 21 days' notice. If a Claimant does not provide sufficient information, the claim or part shall be disallowed, subject to any Review Assessment under Clause 9.
- 4.7. In accordance with the methodology set out in Clauses 5 and 6, MBC will assess the validity and amount of each claim based on the Claimant's Proof of Claim and any further information requested from the Claimants or any third party.
- 4.8. Following an assessment of the claim by MBC under Clause 4.7, MBC will issue an assessment notice to the Claimant ("**Assessment Notice**").

- 4.9. Except as between Related Bodies Corporate, MBC shall keep strictly confidential, including from other Claimants, any information regarding the claims of the Claimants obtained in the claims administration process.

5. LOSS OF MARKET SHARE FUND

- 5.1. A Group Member can only claim loss of profits arising from loss of market share under this Clause if it was a manufacturer of premix containing Class Vitamins ("**Premix**") during the period 5 March 1992 to 28 February 1999 ("**Claim Period**") or any part of the Claim Period.
- 5.2. The Group Members described in Clause 5.1 and who comply with Clause 4.3, shall be referred to in the Settlement Scheme as "**LMS Claimants**".
- 5.3. Each LMS Claimant will be entitled to a payment from the Loss of Market Share Fund according to the following formula:

$$\text{LMS Claimant's entitlement (\$)} = \frac{\text{Purchases of Class Vitamins during the Claim Period by LMS Claimant (\$)}}{\text{Purchases of Class Vitamins during the Claim Period by all LMS Claimants (\$)}} \times \text{Loss of Market Share Fund (\$)}$$

- 5.4. If a LMS Claimant permanently ceased manufacturing Premix at any time during the Claim Period, other than where that Premix manufacturing business has been transmitted to a third party, its purchases of Class Vitamins will be taken as its purchases of Class Vitamins during the Claim Period plus, for each month of the Claim Period following such cessation up to a maximum of 18 months, a deemed purchase allowance calculated as:

$$\text{Average annual purchases of Class Vitamins in the three years prior to cessation of Premix manufacturing (\$)} \times (1.5 \div 18)$$

- 5.5. LMS Claimants are also entitled to make an Overcharge Claim under Clause 6 of the Settlement Scheme.

6. OVERCHARGE FUND

- 6.1. All Group Members are entitled to make a claim for Overcharge under this Clause 6.
- 6.2. The Group Members that make a claim under Clause 6, and who comply with Clause 4.3, shall be referred to in the Settlement Scheme as “**Overcharge Claimants**”.
- 6.3. Each Overcharge Claimant will be entitled to a payment from the Overcharge Fund according to the following formula:

$$\text{Overcharge Claimant's entitlement (\$)} = \frac{\text{Overcharge for the individual Overcharge Claimant (\$)}}{\text{Overcharge for all Overcharge Claimants (\$)}} \times \text{Overcharge Fund (\$)}$$

- 6.4. For the purpose of Clause 6.3 and subject to Clause 6.6, Overcharge means the total Australian dollar value of all purchases of products containing Class Vitamins (“**Class Vitamin Products**”) by an Overcharge Claimant during the relevant periods as set out in Schedule B, multiplied by the applicable “**Vitamin Cost and Absorption Rate**” set out Table 1:

Table 1: Estimated Vitamin Cost and Absorption Rates

	Categories	Vitamin Cost and Absorption Rate
Livestock Industry (Meat – Poultry) Supply Chain		
1.	Premix Manufacturers	6.692%
2.	Feed Manufacturers	2.330%
3.	Livestock Producers	0.052%
4.	Integrated Livestock Producers ¹	3.586%
Livestock Industry (Meat – Pig) Supply Chain		
5.	Premix Manufacturers	6.692%
6.	Feed Manufacturers	3.171%
7.	Livestock Producers	0.054%
8.	Integrated Livestock Producers	4.881%
Livestock Industry (Meat – Cattle) Supply Chain		
9.	Premix Manufacturers	6.692%
10.	Feed Manufacturers	1.428%
11.	Livestock Producers	0.011%
12.	Integrated Livestock Producers	2.198%
Livestock Industry (Meat – Horse) Supply Chain		
13.	Premix Manufacturers	6.692%
14.	Feed Manufacturers	4.644%
15.	Livestock Producers	0.164%
16.	Integrated Livestock Producers	7.148%
Livestock Industry (Meat – Other) Supply Chain		
17.	Premix Manufacturers	6.692%
18.	Feed Manufacturers	1.006%
19.	Livestock Producers	0.008%
20.	Integrated Livestock Producers	1.548%
Livestock Industry (Other – Dairy) Supply Chain		
21.	Premix Manufacturers	6.692%
22.	Feed Manufacturers	1.428%
23.	Livestock Producers	0.009%
24.	Integrated Livestock Producers	2.008%
Livestock Industry (Other – Eggs) Supply Chain		
25.	Premix Manufacturers	6.692%
26.	Feed Manufacturers	2.330%
27.	Livestock Producers	0.039%
28.	Integrated Livestock Producers	3.276%
Veterinary and/or Performance Enhancing Supplement Industry Supply Chain		
29.	Veterinary and/or Performance Enhancing Supplement Manufacturers	7.331%
30.	Veterinary and/or Performance Enhancing Supplement Distributors/Suppliers	0.034%
Pet Food Industry Supply Chain		
31.	Pet Food Manufacturers	13.418%
32.	Pet Food Distributors.	0.002%

6.5. If an Overcharge Claimant's operations fall within more than one of the categories referred to in Table 1 ("**Category**"), the Overcharge Claimant is entitled to receive

¹ Integrated Livestock Producers means Livestock Producers that purchase Premix directly from a premix manufacturer.

compensation for overcharge for each Category. In such cases, a separate calculation of Overcharge will be performed for each Category and then added together to determine the Overcharge Claimant's individual Overcharge for the purpose of determining its entitlement under Clause 6.3.

- 6.6. For the purpose of calculating Overcharge, expenditure on Class Vitamin Products shall not include expenditure on account of medication, enzyme, pigment, flavour, ionophore or animal growth promotant additives included in the Class Vitamin Products.

7. REIMBURSEMENT PAYMENTS AND OUT OF POCKET EXPENSES

Reimbursement Payments

Within 14 days of approval by the Court of the Settlement, nominated Group Members will each receive a "**Reimbursement Payment**" in accordance with the Table 2 below, on account of the significant time and effort those nominated Group Members expended in pursuing this proceeding on behalf of and to obtain a benefit for all Group Members.

Table 2: Reimbursement Payments

Nominated Group Members	Reimbursement Payment
Agribusiness Products Pty Ltd	\$50,000
BEC Feed Solutions Pty Ltd	\$80,000
Darwalla Milling Co. Pty Ltd	\$49,675
Janos Hoey Pty Ltd	\$22,020
Lienert Australia Pty Ltd	\$80,000
Performance Feeds Pty Ltd	\$5,415
Rabar Pty Ltd	\$5,785

Applicants' Out of Pocket Expenses

- 7.1. In addition to the Reimbursement Payments, the Applicants will be reimbursed for the following out of pocket expenses reasonably and necessary incurred in connection with this matter:

Table 3: Applicants' Out of Pocket Expenses

Applicants	Out of Pocket Expenses
BEC Feed Solutions Pty Ltd	\$123,982
Lienert Australia Pty Ltd	\$1,483

- 7.2. The payments under this Clause 7 are to be paid out of the Settlement Distribution Fund before division of the Fund under Clause 3.

8. INTEREST FROM FUNDS

- 8.1. Interest earned on the Settlement Sum in the Settlement Reserve Fund, or on the Settlement Distribution Fund ("**Fund Interest**"), will to the extent necessary be applied to payment of:
- (a) Disbursements incurred in connection with obtaining court approval of the Settlement, including without limitation counsels' and experts' fees;
 - (b) Costs of administering the Settlement Scheme including without limitation notices to Group Members, costs of assessing and distributing Group Members' share of the Settlement Sum and costs relating to any Review Assessment. Such costs may arise as fees and disbursements of the Applicants' solicitors, as approved by the Court.
- 8.2. MBC will obtain Court approval of its professional fees and disbursements of administering the Settlement Scheme, prior to being paid the same from the Fund Interest.
- 8.3. Any Fund Interest not applied in accordance with Clause 8.1, shall be allocated to the two funds referred to in Clause 3.2 pro rata according to the balance held in each fund, and will be available for distribution in accordance with Clauses 5 to 7 inclusive.

9. REVIEW ASSESSMENT

- 9.1. If a Claimant disputes its Assessment Notice, it may within 28 days of the date of the Assessment Notice request that a review assessment be performed by the Independent Counsel ("**Review Assessment**"), failing which the Claimant shall be deemed to accept the Assessment Notice as binding and subject to paragraph 11.1

no appeal shall lie therefrom. Each Claimant shall be advised of the availability of a Review Assessment at the time the Assessment Notice is issued.

- 9.2. John Dixon of Counsel shall be Independent Counsel under the Settlement Scheme. In the event that Mr Dixon should become unavailable, David Bailey of Counsel shall be Independent Counsel. In the event that Mr Bailey should become unavailable, a commercial barrister of at least 15 years post-admission experience shall be nominated as Independent Counsel by the Chairman of the Victorian Bar Council.
- 9.3. Independent Counsel may by written notice require the Claimant to submit further documentation in support of the application for Review Assessment and such documentation shall be submitted within 21 days, failing which it shall be excluded from consideration.
- 9.4. In accordance with the methodology set out in Clauses 5 and 6, Independent Counsel shall determine the validity and amount of each claim made by the Claimant based on the Claimant's Proof of Claim and any further information requested from the Claimants or any third party.
- 9.5. The Review Assessment shall be in writing and shall be issued within 35 days of the date of the request for the Review Assessment or the date of any notice given by Independent Counsel under Clause 9.3, whichever is later.
- 9.6. Any determination by the Independent Counsel of an amount of damages to which a Claimant is entitled is binding on the Claimant. A Claimant has liberty to apply to the Court on a question of law arising from a determination of Independent Counsel.
- 9.7. The Claimant requesting the Review Assessment under the Settlement Scheme shall pay the costs of the Review Assessment.
- 9.8. The cost of a Review Assessment will be \$3,750.00 for a Review Assessment that takes up to 10 hours to complete. If the time taken to complete a Review Assessment is greater than 10 hours but less than 15 hours, Independent Counsel will waive any fees beyond the fixed amount of \$3,750.00. If the Review Assessment takes in excess of 15 hours to complete, the Review Assessment will cost \$3,750.00 plus \$375.00 for every hour spent on the Review Assessment beyond the first 15-hour period.
- 9.9. Independent Counsel may require a Claimant to provide security for the costs of a Review Assessment in the sum of \$3,750.00. If security is not provided as required within 30 days, Independent Counsel shall issue a Review Assessment in the amount of the Assessment Notice.

- 9.10. The amounts referred to in Clauses 9.8 and 9.9 are exclusive of GST.
- 9.11. If the costs of a Review Assessment have not been paid by the Claimant as at the allowable dates for distribution of the Overcharge Fund under Clause 10.1 and the Loss of Market Share Fund under Clause 10.2, MBC shall deduct those costs from any sum otherwise due to be distributed to the Claimant under the Settlement Scheme. The Claimant shall remain liable for any costs not recovered by a deduction pursuant to this Clause and MBC, in administering the Settlement Scheme, may apply to the Court for an order requiring the Claimant to pay those costs.
- 9.12. The time for doing any act or thing under this clause of the Settlement Scheme may be extended by direction of the Independent Counsel.

10. TIMING OF PAYMENT

- 10.1. The payments under Clause 7 will be paid within 14 days of the date of approval by the Court of the Settlement.
- 10.2. Subject to any further order or direction by the Court, the monies held in the Loss of Market Share Fund will be distributed within 28 days of the finalisation of assessments of all claims under Clause 5, including any Review Assessments of those claims.
- 10.3. Subject to any further order or direction by the Court, the monies held in the Overcharge Fund will be distributed within 28 days of the finalisation of assessments of all claims under Clause 6, including any Review Assessments of those claims.

11. GENERAL DISPUTE RESOLUTION OR ALTERATION OF THE TERMS OF THE SETTLEMENT SCHEME

- 11.1. MBC may refer any issues arising in relation to the Settlement Scheme or the administration and implementation of the Settlement Scheme to the Court for determination. Without limiting the foregoing, if MBC considers it necessary or desirable to establish a mechanism for estimating any thing for the purposes of this Scheme not already provided by this Scheme, MBC may refer the mechanism to the Court for its approval.

12. NOTICE

- 12.1. Notice under the Settlement Scheme is effective if it is:
- (a) Addressed to the person to who it is to be given; and

- (b) Either;
 - (i) Delivered or sent by pre-paid mail to that person's address;
 - (ii) Sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) Sent by email to that person's email address and the machine from which it is sent produces a report that states that the email has been opened by the recipient.

12.2. A notice that complies with this Clause 12 will be deemed to have been given and received:

- (a) If it was sent by mail to an addressee in Australia, two clear business days after being sent;
- (b) If it is sent by mail to an addressee overseas, five clear business days after being sent;
- (c) If it is delivered or sent by fax, at the time stated on the report that is produced by the machine from which it is sent; and
- (d) If it is sent by email, at the time a read receipt report states it has been opened by the recipient.

12.3. MBC's address, fax number and email address are those set out below or as MBC may subsequently notify the sender:

Vitamins Class Action
Maurice Blackburn Cashman Pty Ltd
PO Box 523J
MELBOURNE VIC 3001
Fax: (03) 9600 2407
Email: vitamins.settlement@mbc.aus.net

13. TIME

13.1 The time for doing any act or thing under the Settlement Scheme may be extended by agreement between MBC and a Claimant, or in the absence of any agreement, by direction of Independent Counsel or the Court.

DATED the 31st day of August 2006

Schedule A.: Proof of Claim

AUSTRALIAN VITAMINS CLASS ACTION

Claims Administrator
Maurice Blackburn Cashman Pty Ltd
Level 10, 456 Lonsdale Street
MELBOURNE VIC 3000
PO Box 523J
MELBOURNE VIC 3001
Telephone: 1800 810 812

PROOF OF CLAIM

To make a Claim you must:

1. Read this document
2. Complete the Claim Form and Statutory Declaration and Supporting Documents Inventory
3. Return the Claim Form, Statutory Declaration, Supporting Documents Schedule and Supporting Documents to the Claims Administrator by [insert date]

IF YOU DO NOT SUBMIT YOUR PROOF OF CLAIM BY [INSERT DATE] YOU WILL NOT BE ENTITLED TO MAKE A CLAIM UNDER THE SETTLEMENT SCHEME

1. DEFINITIONS

In this document:

"**Claimant**" means a Group Member making a claim under the Settlement Scheme.

"**Claim Period**" means the period 5 March 1992 to 28 February 1999.

"**Claims Administrator**" means Maurice Blackburn Cashman Pty Ltd ("**MBC**").

"**Class Vitamins**" means vitamins A, E, B1, B2, B5, C, Beta-carotene or Canthaxanthin for animal nutrition or health purposes (together and individually).

"**Class Vitamin Products**" means Class Vitamins and products containing Class Vitamins.

"**Excluded Group Members**" are:

- (a) Respondents to the Vitamins Class Action or their Related Bodies Corporate;
- (b) Group Members to or for whom any Respondent(s) or their Related Bodies Corporate have provided, other than under the Settlement Scheme, any payment, benefit or other advantage, including without limitation any discount, allowance, rebate, or credit in relation to goods acquired, on account of or in connection with any claim, or potential claim, arising out of the subject of the Vitamins Class Action.

"**Group Members**" are:

- (a) Manufacturers, distributors and suppliers of premixes containing Class Vitamins;
- (b) Manufacturers, distributors and suppliers of stock feeds containing Class Vitamins;
- (c) Producers of livestock including poultry, pigs, sheep and cattle, and dairy farmers, egg producers and aquaculturalists, who purchased stock feeds containing Class Vitamins;
- (d) Manufacturers, distributors and suppliers of veterinary and performance enhancing preparations and supplements containing Class Vitamins;
- (e) Manufacturers and distributors of pet food containing Class Vitamins;

who

- (i) Were at all relevant times ordinarily resident in or carrying on business in Australia;
- (ii) Paid at least two thousand Australian dollars (AUD\$2,000.00) in the period 5 March 1992 to 31 December 1999 for Class Vitamins or Premix or other animal health or nutrition products containing Class Vitamins; and
- (iii) Are not Justices or Registrars of the High Court of Australia or the Federal Court of Australia.

"Premix" means premix containing Class Vitamins.

"Proof of Claim" means a properly completed Claim Form, Statutory Declaration, Supporting Documents Inventory and all Supporting Documents.

"Purchase Period" means a period less than or equal to the Claim Period as specified.

"Purchase Value" means the actual price paid for purchases of Class Vitamins Products in Australian dollars excluding sales taxes, freight and delivery charges.

"Related Bodies Corporate" mean related bodies corporate as defined in Section 50 of the *Corporations Act 2001 (Cth)* which provides that: *Where a body corporate is:*

- (a) a holding company of another body corporate; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate; the first-mentioned body and the other body are related to each other.

"Respondents" to the Vitamins Class Action are F. Hoffmann – La Roche Ltd, Roche Products Pty Ltd, Roche Vitamins Australia Pty Ltd, Roche Vitamins Asia Pacific Pte Ltd, Aventis SA (formerly Rhone-Poulenc), Aventis Animal Nutrition Pty Ltd, Aventis Animal Nutrition SA, Aventis Animal Nutrition Asia Pacific Pte Ltd, BASF AG, BASF Australia Ltd and BASF East Asia Regional Headquarters Pty Ltd.

"Settlement Scheme" means the Settlement Distribution Scheme in the Vitamins Class Action approved by the Court on [insert date].

"Supporting Documents" means documents including without limitation invoices, business, financial or other records, evidencing the purchase of Class Vitamins Products or where applicable, expenditure on additives such as medications, enzymes, pigments, flavours, ionophores or animal growth promotants.

"Vitamins Class Action" means Federal Court of Australia Proceeding No. V359 of 1999, *Darwalla Milling Company Pty Ltd & Ors v F. Hoffmann La-Roche Limited & Ors*.

"Vitamins Class Action Settlement" means the settlement of the Vitamins Class Action approved by the Federal Court of Australia on [insert date].

2. IMPORTANT INFORMATION

- 2.1. You should obtain and read the Notice of Settlement dated [insert date] and the Settlement Scheme. These documents may be viewed at <http://mbc.aus.net/vitamins> or obtained by telephoning the Claims Administrator on 1800 810 812 to request a copy.
- 2.2. To be eligible to make a claim under the Settlement Scheme you must be a Group Member and submit a Proof of Claim by [insert date]. Excluded Group Members cannot make claims under this Settlement Scheme. If you are not sure whether you are a Group Member or an Excluded Group Member please call the Claims Administrator on 1800 810 812.
- 2.3. If you are a Group Member and have not opted out of the Vitamins Class Action then you are already bound by the Vitamins Class Action Settlement. That is, you have no further legal recourse to the Respondents in respect of the subject of the Vitamins Class Action except under the Settlement Scheme.
- 2.4. Any Group Member that fails to submit a Proof of Claim by [insert date] is not entitled to make a claim under the Settlement Scheme.
- 2.5. It is impossible to determine the value of any individual entitlement of an Overcharge Claimant until all Overcharge Claims have been assessed and any Review Assessments have been completed. It is impossible to determine the value of loss of market share. The value of each individual entitlement depends upon, among other factors, the total number of valid claims submitted for each claim type and the assessed value of those claims.

3. INSTRUCTIONS

To make a claim you must:

- 3.1. Complete the Claim Form. The Claim Form must be filled out completely and must be typed or printed. You must complete the Claim Form accurately as you will be required to sign a Statutory Declaration and provide Supporting Documents to verify the information provided in your Claim Form.

- 3.2. Complete a separate Claim Form for each Claimant which is a separate legal entity (for example where you operate a corporate group comprising more than one corporation).
- 3.3. Provide a Historical Company Extract or Business Name Extract or equivalent for each Claimant.
- 3.4. Arrange an authorised representative of each claimant to sign the Statutory Declaration before a person who is authorised to witness the signing of a Statutory Declaration and submit it with the Proof of Claim. A Proof of Claim submitted without a signed Statutory Declaration will be invalid and the claimant will not be entitled to make a claim under the Settlement Scheme.
- 3.5. Provide such Supporting Documents as will prove your purchases of Class Vitamins Products on the balance of probabilities. That is, the Supporting Documents must establish that it is more likely than not that the Claimant made the purchases of Class Vitamins Products that you claim were made.
- 3.6. Complete Schedule 1 to the Statutory Declaration (listing the Supporting Documents you are providing). Where any Supporting Documents do not exist or are no longer in your possession you must provide an explanation as to why they do not exist or are no longer in your possession.
- 3.7. Send by registered post or deliver your completed Proof of Claim so that the Claims Administrator receives it no later than [insert date].
- 3.8. Retain a photocopy of your completed Proof of Claim (including all Supporting Documents and other attachments).
- 3.9. Contact the Claims Administrator if you have any questions. **DO NOT CONTACT THE COURT.**
- 3.10. Do not mail or deliver your Proof of Claim to the Court or to anyone other than the Claims Administrator.

4. PROCEDURE FOR ASSESSMENT NOTICES

- 4.1. The Claims Administrator will use your Proof of Claim to determine the Purchase Value of your purchases of Class Vitamins Products.
- 4.2. The Claims Administrator may require you to provide additional information upon 21 days' notice to you.
- 4.3. If you do not provide sufficient information to prove your claim or any part of your claim, your claim or the relevant part shall be disallowed, subject to any Review Assessment.
- 4.4. The Claims Administrator has the right to adjust any claim based upon the information provided by you or from a third party.
- 4.5. The Claims Administrator will assess the individual overcharge for each Overcharge Claimant (Clause 5 of the Settlement Scheme) and the individual Class Vitamins Purchases for each Loss of Market Share Claimant (Clause 6 of the Settlement Scheme) and issue an Assessment Notice to each claimant.
- 4.6. Any Review Assessments will be completed.
- 4.7. Once all Review Assessments (if any) for the Overcharge Claims are complete, the entitlement of each Overcharge Claimant to the Overcharge Fund will be calculated and a distribution made to the Overcharge Claimant equal to that entitlement.
- 4.8. Once all Review Assessments (if any) for the Loss of Market Share are complete, the entitlement of each Loss of Market Share Claimant to the Loss of Market Share Fund will be calculated and a distribution made to the Loss of Market Share equal to that entitlement.
- 4.9. The Claims Administrator will act as lawyers to administer the claims on behalf of the Group Members as a whole, and not as the lawyer for any individual Group Member. The Claims Administrator can assist you with administrative questions regarding the preparation and submission of your Proof of Claim. However, if you require individual legal advice regarding the preparation and submission of your Proof of Claim, you should retain solicitors other than MBC.

5. DISPUTES REGARDING SETTLEMENT

- 5.1. You may dispute your Assessment Notice by requesting that Independent Counsel perform a Review Assessment.
- 5.2. You will be provided with further information about the Review Assessment when your Assessment Notice is issued.

Office Use Only Claim Number	
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**VITAMINS CLASS ACTION SETTLEMENT
CLAIM FORM**

TO: Claims Administrator
Maurice Blackburn Cashman Pty Ltd
 Level 10, 456 Lonsdale St
 MELBOURNE VIC 3000
 PO Box 523J
 MELBOURNE VIC 3001
 Telephone: 1800 810 812

1. CONFIDENTIALITY AND PRIVACY

MBC requires that you provide certain information and documents to enable it to assess and administer your Claim. MBC will keep the contents of any information you provide to MBC for this purpose confidential and in particular will not reveal the contents of any information you provide to MBC to other Group Members. Upon completion of your Claim MBC will return your information at your request. Otherwise, the information will remain stored in MBC's possession for a period of seven years after completion of your Claim, following which MBC is authorised to destroy the information. MBC has a Privacy Policy that explains how MBC collects, uses, discloses and protects personal and sensitive information. You may view MBC's Privacy Policy at its website at <http://mbc.aus.net> or by telephoning 1800 810 812 to request a copy.

2. IS THIS CLAIM RELATED TO ANY OTHER CLAIM?

Have you completed a Proof of Claim for any other Claimant(s)? Name of Other Claimant(s): _____

Is a Proof of Claim being submitted on behalf of any other Claimant which is a Related Body Corporate? Name of Other Claimant(s): _____

Is the Claimant a member of a corporate group in which the ultimate holding company is foreign? Name of the parent company of the Claimant: _____

3. CLAIMANT'S IDENTIFICATION AND CONTACT DETAILS

All correspondence to you concerning your claim will be sent to the postal address provided below. If your address changes after you submit this Proof of Claim, you must immediately notify MBC in writing.

Business or trading name of Claimant:			
Legal status <input type="checkbox"/> Corporation <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Executor <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____	Legal name of Claimant:		
	ACN/ABN:		
Postal Address			
Residential Address (if different from above)			
Address of principal place of business during the Claim Period			
Contact person			
Title/Position of contact person			
Telephone Number (business hours)		()	
Mobile Telephone Number			
Email address			
Facsimile Number		()	

4. RECEIPT OF ANY OTHER SETTLEMENT PAYMENTS ETC

Are you a Group Member to or for whom any of the Respondents or their Related Bodies Corporate have provided any payment, benefit or other advantage, including without limitation any discount, allowance, rebate or credit in relation to goods acquired, on account of or in connection with any claim, or any potential claim, arising out of the subject of the Vitamins Class Action?

Yes No Unsure

5. TRANSFER OR ASSIGNMENT OF RIGHT TO CLAIM

If you acquired the rights that are the basis for the claim asserted herein from some other person or entity, for example, by transfer or assignment, attach a separate page explaining the legal basis for your derivative rights and attach documentation evidencing such rights.

6. INCORPORATED ENTITIES - HISTORICAL COMPANY EXTRACT

If your business was operated by an incorporated entity at any time during the Claim Period, you must give the Claims Administrator a full company search, also called a *historical company extract*, in respect of that entity. The historical company extract must be dated within 56 days of the date of your Proof of Claim. Company extracts are produced by the Australian Securities and Investment Commission ("ASIC"). To purchase a Company Extract you can:

- (a) Contact ASIC for the nearest ASIC Service Centre on 03 5177 3988, 8.30am to 7pm Eastern Standard Time on weekdays, email info.enquiries@asic.gov.au, or visit <http://www.asic.gov.au>; or
- (b) Conduct an online or telephone search using an Information Broker. An Information Broker may include additional service delivery fees. You can search for an Information Broker on the ASIC website at <http://www.asic.gov.au>.

OR My business is (or was) incorporated but I have been unable to obtain a Historical Company Extract because: _____

7. OTHER REGISTERED ENTITIES

If your business was registered in your state or territory but was not incorporated at any time during the Claim Period, you must give MBC a *business name extract* or equivalent extract in respect of your business. To purchase a business name extract you should contact the applicable Government Registry referred to below:

ACT	ACT Registrar General's Office
NSW	NSW Office of Fair Trading
NT	Department of Justice
QLD	Queensland Office of Fair Trading
SA	Office of Consumer & Business Affairs
TA	Consumer Affairs & Fair Trading
VIC	Consumer Affairs Victoria
WA	Department of Consumer & Employment Protection
ABR	Australian Business Register

OR My business is (or was) registered but I have been unable to purchase a business name extract because: _____

8. PREVIOUS DETAILS

If during the Claim Period you used a business or trade name or were located at an address other than the name and address set out above, indicate each such name and/or address.

Other Business or Trade Name	Other Addresses	Period

9. INDUSTRY OF OPERATION

Please indicate in which of the following industries your business operated during any part of the Claim Period. If none of those categories apply to your business operations please attach a separate page describing in detail those operations.

Premix Manufacturer



Types of Premixes:

- | | | | |
|---------|--------------------------|-----------------|--------------------------|
| Pig | <input type="checkbox"/> | Sheep/Cattle | <input type="checkbox"/> |
| Poultry | <input type="checkbox"/> | Aquaculturalist | <input type="checkbox"/> |
| Egg | <input type="checkbox"/> | Other | <input type="checkbox"/> |
| Dairy | <input type="checkbox"/> | | |

Feed Manufacturer



Type of Feed:

- | | | | |
|---------|--------------------------|-----------------|--------------------------|
| Pig | <input type="checkbox"/> | Sheep/Cattle | <input type="checkbox"/> |
| Poultry | <input type="checkbox"/> | Aquaculturalist | <input type="checkbox"/> |
| Egg | <input type="checkbox"/> | Other | <input type="checkbox"/> |
| Dairy | <input type="checkbox"/> | | |

Livestock Producer



Did you purchase Premix during the Claim Period?

Yes No

Type of Livestock:

- | | | | |
|---------|--------------------------|-----------------|--------------------------|
| Pig | <input type="checkbox"/> | Sheep/Cattle | <input type="checkbox"/> |
| Poultry | <input type="checkbox"/> | Aquaculturalist | <input type="checkbox"/> |
| Egg | <input type="checkbox"/> | Other | <input type="checkbox"/> |
| Dairy | <input type="checkbox"/> | | |

Veterinary and/or Performance Enhancing Supplement Manufacturer

Veterinary and/or Performance Enhancing Supplement Distributor/Supplier

Pet Food Manufacturer

Pet Food Distributor/Supplier

10. ADDITIVES

Did any of the Class Vitamin Products purchased by you during the Claim Period contain any of the following additives?

Medications <input type="checkbox"/>	Pigments <input type="checkbox"/>	Animal growth promotants <input type="checkbox"/>
Enzymes <input type="checkbox"/>	Flavours <input type="checkbox"/>	Ionophores <input type="checkbox"/>

11. PURCHASES OF CLASS VITAMINS PRODUCTS

Class Vitamins Product	Purchase Period	Total Purchase Value of Class Vitamins Products purchased in the Purchase Period	Total tonnes of Class Vitamins Products purchased in the Purchase Period	Amount of expenditure on account of medications, enzymes, pigments, flavours, ionophores or animal growth promotants
Vitamin A	5 March 1992 to 31 December 1999			
Vitamin B1	5 March 1992 to 30 April 1995			
Vitamin B2	5 March 1992 to 31 October 1996			
Vitamin B5	5 March 1992 to 28 February 1999			
Vitamin C	5 March 1992 to 31 July 1996			
Vitamin E	5 March 1992 to 28 February 1999			
Canthaxanthin	5 March 1992 to 31 December 1998			
Beta-carotene	5 March 1992 to 31 December 1998			
Poultry Premix	5 March 1992 to 28 February 1999			
Cattle Premix	5 March 1992 to 28 February 1999			
Dairy Premix	5 March 1992 to 28 February 1999			
Pig Premix	5 March 1992 to 28 February 1999			
Horse Premix	5 March 1992 to 28 February 1999			
Sheep Premix	5 March 1992 to 28 February 1999			
Other Premix	5 March 1992 to 28 February 1999			
Poultry Feed	5 March 1992 to 28 February 1999			
Pig Feed	5 March 1992 to 28 February 1999			
Cattle/Dairy Feed	5 March 1992 to 28 February 1999			
Sheep Feed	5 March 1992 to 28 February 1999			
Other Feed	5 March 1992 to 28 February 1999			
Veterinary and/or Performance Enhancing Supplements containing Class Vitamins	5 March 1992 to 31 December 1999			
Pet Food containing Class Vitamins	5 March 1992 to 31 December 1999			

VITAMINS CLASS ACTION SETTLEMENT

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

I, _____ [Name,
address and occupation] make the following Declaration under the *Statutory Declarations Act 1959* on
behalf of _____ [Claimant].

1. I make this Statutory Declaration from my own personal knowledge except where otherwise stated.
2. I have the appropriate authority to submit this Proof of Claim on behalf of the Claimant.
3. I have read and understood the Notice of Settlement dated [insert date], the Settlement Scheme and the Proof of Claim. The terms used in this Statutory Declaration have the same meaning as defined in paragraph 1 of the Proof of Claim.
4. The Claimant is a Group Member.
5. The Claimant is not an Excluded Group Member.
6. The Claimant did not opt out of the Vitamins Class Action by filing a Notice of Opt Out with the Court.
7. No other claim under the Settlement Scheme has been or will be submitted by the Claimant, its directors, shareholders, officers or employees on behalf of the Claimant.
8. The Claimant has disclosed any and all transfers and/or assignments of rights to compensation regarding the vitamins price fixing cartel the subject of the Vitamins Class Action.
9. The Claimant has included information and documents in relation to only Class Vitamins Products purchased in Australia during the relevant Purchase Periods referred to in paragraph 10 of the Claim Form.
10. I acknowledge and agree that the Claims Administrator may disclose any and all information pertaining to this claim to the Federal Court of Australia.
11. All information provided by me in the Proof of Claim is true and correct and specifically, accurately reflects the Claimant's purchases of Class Vitamins Products during the relevant periods.
12. The Settlement Documents provided by me and set out in Schedule 1 to this Statutory Declaration are true and correct copies of those documents and accurately reflect the Claimant's purchases of Class Vitamins Products during the relevant periods.

I understand that a person who intentionally makes a false statement in a Statutory Declaration is guilty of an offence under Section 11 of the *Statutory Declarations Act 1959*, and I believe that all statements made by me in this Declaration are true in every particular.

Signature:

Declared at _____ on _____ of _____ 2006

Before me,

Signature (of person before whom the Declaration is made and who is a person described in Schedule 2):
.....

Full name, qualification and address of person before whom the Declaration is made (in printed letters)
.....

VITAMINS CLASS ACTION SETTLEMENT

STATUTORY DECLARATION

SCHEDULE 1: SUPPORTING DOCUMENTS

The following documents that I am providing are the best available documents in my possession, that evidence the Claimant's purchases of Class Vitamins Products for the relevant periods:

Item	Document Date	Document Description	Purchases of Class Vitamins Products to which the document relates
1			
2			
3			
4			
5			
6			
7			
8			
9			

The Claimant is unable to provide the following Supporting Documents:

Item	Document Date	Document Description	Purchases of Class Vitamins Products to which the document relates	Reason for not being able to provide this document
1				
2				
3				
4				
5				
6				
7				
8				

VITAMINS CLASS ACTION SETTLEMENT

STATUTORY DECLARATION

SCHEDULE 2: PERSONS BEFORE WHOM A STATUTORY DECLARATION MAY BE MADE

A statutory declaration under the *Statutory Declarations Act 1959* may be made before—

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
Bailiff
Bank officer with 5 or more continuous years of service
Building society officer with 5 or more years of continuous service
Chief executive officer of a Commonwealth court
Clerk of a court
Commissioner for Affidavits
Commissioner for Declarations
Credit union officer with 5 or more years of continuous service
Employee of the Australian Trade Commission who is:
(a) in a country or place outside Australia; and
(b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and
(c) exercising his or her function in that place
Employee of the Commonwealth who is:
(a) in a country or place outside Australia; and
(b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
(c) exercising his or her function in that place
Fellow of the National Tax Accountants' Association
Finance company officer with 5 or more years of continuous service
Holder of a statutory office not specified in another item in this list
Judge of a court
Justice of the Peace
Magistrate
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
Master of a court
Member of Chartered Secretaries Australia
Member of Engineers Australia, other than at the grade of student
Member of the Association of Taxation and Management Accountants
Member of the Australasian Institute of Mining and Metallurgy
Member of the Australian Defence Force who is:
(a) an officer; or
(b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
(c) a warrant officer within the meaning of that Act
Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
Member of:
(a) the Parliament of the Commonwealth; or
(b) the Parliament of a State; or
(c) a Territory legislature; or
(d) a local government authority of a State or Territory
Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
Notary public
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
Permanent employee of:
(a) the Commonwealth or a Commonwealth authority; or
(b) a State or Territory or a State or Territory authority; or
(c) a local government authority;
with 5 or more years of continuous service who is not specified in another item in this list
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
Police officer
Registrar, or Deputy Registrar, of a court
Senior Executive Service employee of:
(a) the Commonwealth or a Commonwealth authority; or
(b) a State or Territory or a State or Territory authority
Sheriff
Sheriff's officer
Teacher employed on a full-time basis at a school or tertiary education institute

Schedule B. Class Vitamin Products and Relevant Periods

Class Vitamin Products	Relevant Period
Vitamin A	5 March 1992 to 28 February 1999
Vitamin B1	5 March 1992 to 30 April 1995
Vitamin B2	5 March 1992 to 31 October 1996
Vitamin B5	5 March 1992 to 28 February 1999
Vitamin C	5 March 1992 to 31 July 1996
Vitamin E	5 March 1992 to 28 February 1999
Beta-carotene	5 March 1992 to 31 December 1998
Canthaxanthin	5 March 1992 to 31 December 1998
Premix containing any Vitamins A, B1, B2, B5, C, E, Canthaxanthin or Beta-carotene	5 March 1992 to 28 February 1999
Feed containing any Vitamins A, B1, B2, B5, C, E, Canthaxanthin or Beta-carotene	5 March 1992 to 28 February 1999
Pet Food containing any Vitamins A, B1, B2, B5, C, E, Canthaxanthin or Beta-carotene	5 March 1992 to 28 February 1999
Veterinary and Performance Enhancing Supplements containing any Vitamins A, B1, B2, B5, C, E, Canthaxanthin or Beta-carotene	5 March 1992 to 28 February 1999