

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

**NOTICE OF FILING**

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/09/2012.

**DETAILS OF FILING**

**Document Lodged:** Amended Document  
**File Number:** NSD1847/2010  
**File Title:** Gaby Hadchiti & Ors v Nufarm Ltd  
**District Registry:** NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Date:** 12/09/2012

**Registrar**

*Warwick Soden*

**Note**

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.



**SECOND FURTHER AMENDED ORIGINATING APPLICATION STARTING A REPRESENTATIVE PROCEEDING UNDER PART IVA OF THE FEDERAL COURT OF AUSTRALIA ACT 1976**

(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

To The Respondent  
Nufarm Limited  
103-105 Pipe Road  
Laverton North  
VICTORIA 3026.

The Applicants apply for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

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Filed on behalf of Gaby Hadchiti and Others, the Applicants

Prepared by Michael Lee and Alistair Pound of counsel, Benjamin Phi of Slater & Gordon and Jason Geisker of Maurice Blackburn.

**Joint Lawyers for the Applicants:**

Maurice Blackburn Pty Ltd  
Tel: (02) 9261 1488  
Fax: (02) 9261 3318  
Email: [jgeisker@mauriceblackburn.com.au](mailto:jgeisker@mauriceblackburn.com.au)

Slater & Gordon Limited  
Telephone: (03) 9602 6923  
Facsimile: (03) 9600 0290  
Email: [bphi@slatergordon.com.au](mailto:bphi@slatergordon.com.au)

**Joint Address for service:**

485 La Trobe Street  
Melbourne VIC 3000  
[service@nufarmclassaction.com.au](mailto:service@nufarmclassaction.com.au)

Time and date for hearing:

Place: Federal Court of Australia  
Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

Date:

.....  
Signed by an officer acting with the authority  
of the District Registrar

## Representative Action

1. This application is brought by the Applicants on their own behalf and as representative parties under *Part IVA of the Federal Court of Australia Act 1976*.
2. The Applicants and the persons whom they represent (the **Group Members**) are persons who:
  - 2.1. acquired an interest in shares in the Respondent (**Nufarm**) during the period from 28 September 2009 to 31 August 2010 inclusive (**the Relevant Period**);
  - 2.2. suffered loss and damage by reason of the Contravening Conduct pleaded in the Further Amended Consolidated Statement of Claim;
  - 2.2.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
  - 2.3. ~~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;
    - (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
  - 2.4. despite paragraphs 2.3(a) to 2.3(d), include Sumitomo Chemical Company Limited.

## Details of Claim

3. On the grounds stated in the accompanying [Further Amended Consolidated Statement of Claim](#), the Applicants make claims pursuant to the provisions of Chapter 6CA, Chapter 7, Part 7.10, Div 2 and Chapter 9, Part 9.4B of the *Corporations Act*, Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and Part 2 and Part 11 Div 2 of the *Fair Trading Act 1999* (Vic) (**FTA**) and claim the following relief:
  - 3.1. a declaration that the Respondent contravened s 1041H(1) of the *Corporations Act*, s 12DA of the ASIC Act and/or s 9 of the FTA by making any one or more of:
    - (a) either or both of the 28 September 2009 Representations (as defined in paragraph 23 of the [Further Amended Consolidated Statement of Claim](#));
    - (b) the 26 October 2009 Representation (as defined in paragraph 32);
    - (c) the 3 December 2009 Representation (as defined in paragraph 39);
    - (d) the FY10 Profit Forecast (as defined in paragraph 52.6);
    - (e) the 2 March 2010 Representation (as defined in paragraph 53);
    - (f) the 30 March 2010 Representation (as defined in paragraph 72);
    - (g) the 20 April 2010 Representation (as defined in paragraph 78.2);
    - (h) the 28 May 2010 Representation (as defined in paragraph 85.2); or
    - (i) the 22 June 2010 Representation (as defined in paragraph 96.2);
  - 3.2. a declaration that, for the purposes of s 1041I(1) of *Corporations Act*, s 12GF(1) of the ASIC Act and/or s 159 of the FTA, the Applicants and the Group Members suffered loss or damage by reason of one or more of the contraventions referred to in the preceding subparagraph;
  - 3.3. damages pursuant to s 1041I(1) of the *Corporations Act*, s 12GF(1) of the ASIC Act and/or s 159(1) of the FTA on behalf of the Applicants and the Group Members;

- 3.4. a declaration pursuant to s 1317E(1)(ja) of the *Corporations Act* that the Respondent contravened s 674(2) of the *Corporations Act* by failing to notify the [Australian Securities Exchange](#) (~~Australian Securities Exchange (ASX)~~) of:
- (a) Nufarm's Likely 1H10 Financial Result (as defined in paragraph 46 of the [Further Amended Consolidated](#) Statement of Claim);
  - (b) the Revised Profit Forecast (as defined in paragraph 59);
  - (c) the First Revised FY10 Net Debt Forecast (as defined in paragraph 66);
  - (d) the Second Revised FY10 Net Debt Forecast (as defined in paragraph 109); and/or
  - (e) the Material Information (as defined in paragraph 114)
- as soon it was or ought to have been aware of that information;
- 3.5. a declaration that for the purposes of s 1317HA(1) of *Corporations Act* the Applicants and the Group Members suffered loss or damage as a result of the Respondent's contravention or contraventions of s 674(2) of the *Corporations Act* referred to in the preceding paragraph; and
- 3.6. an order pursuant to s 1317HA(1) of the *Corporations Act* that the Respondent compensate the Applicants and the Group Members for the loss or damage suffered by them as a result of the Respondent's contravention or contraventions of s 674(2) of the *Corporations Act*.
4. The Applicants also claim:
- 4.1. interest on any statutory compensation awarded;
  - 4.2. costs; and
  - 4.3. such further or other order as the Court thinks fit.

## Questions Common to Claims of Group Members

5. The questions of law or fact common to the claims of the Group Members are:
  - 5.1. whether the Respondent made the Inventory Representation (as defined in paragraph 23.1 of the [Further Amended Consolidated Statement of Claim](#)), the Improved Profit Representation (as defined in paragraph 23.2), the 28 September 2009 Representations, the 26 October 2009 Representation, the 3 December 2009 Representation, the FY10 Profit Forecast, the 2 March 2010 Representation, the 30 March 2010 Representation, the 20 April 2010 Representation, the 28 May 2010 Representation and/or the 22 June 2010 Representation (“**the Representations**”);
  - 5.2. whether the making of any or all the Representations constituted conduct in relation to a financial product for the purposes of s 1041H of the *Corporations Act* or in relation to a financial service for the purposes of s 12DA of the ASIC Act or in trade or commerce for the purposes of s 12DA of the ASIC Act and s 9 of the FTA;
  - 5.3. whether the Respondent assumed a significant improvement in glyphosate demand, prices and margins in FY10, and particularly in 2H10, for the purposes of making and repeating the Improved Profit Representation and/or the FY10 Profit Forecast;
  - 5.4. whether, if so, the Respondent had a genuine and reasonable basis for making that assumption and for making any of the Representations at the time they were made;
  - 5.5. whether, if so, any or all of the Representations were misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the *Corporations Act*, s 12DA of the ASIC Act and/or s 9 of the FTA;
  - 5.6. whether the making of any one or more of the Representations caused the Respondent’s share price to be higher during the Relevant Period than it would have been had they not been made and, if so, to what extent or by what amount;
  - 5.7. whether, if so, it is necessary for the Applicants and Group Members to have relied, directly or indirectly, on any of the Representations in order to have suffered loss or damage by the Respondent’s contravention or contraventions

of s 1041H of the *Corporations Act*, s 12DA of the *ASIC Act* and/or s 9 of the *FTA*;

- 5.8. whether the Group Members are persons who suffered loss or damage by the Respondent's contravention or contraventions of s 1041H of the *Corporations Act*, s 12DA of the *ASIC Act* and/or s 9 of the *FTA* and, if so, what is the proper method of assessment of that loss and damage;
- 5.9. whether the Respondent ought to have been aware of its Likely 1H10 Financial Result at any time prior to 2 March 2010 and, if so, when;
- 5.10. whether the Respondent ought to have been aware of the Revised Profit Forecast at any time prior to 14 July 2010 and, if so, when;
- 5.11. whether the Respondent's systems enabled it to estimate accurately the likely selling price of its glyphosate products in any of its global markets over the course of FY10;
- 5.12. whether the Respondent had the ability to estimate accurately the likely profitability of its glyphosate business and its business overall in FY10;
- 5.13. whether the Respondent ought to have been aware of the Material Information at any time prior to 14 July 2010;
- 5.14. whether, and if so to what extent, the Respondent's accounts receivable cash collection cycle and/or its net operating profit after tax, excluding material items, affected the Respondent's year end net debt levels;
- 5.15. whether the Respondent should have formed the opinion at any time during the Relevant Period that 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;
- 5.16. whether the Respondent ought to have been aware of the First Revised FY10 Net Debt Forecast or the Second Revised FY10 Net Debt Forecast at any time prior to 1 September 2010;
- 5.17. whether information that the Respondent's year end net debt level would be materially higher than previously forecast was information that a reasonable person would expect to have a material effect on the price or value of the Respondent's shares;



- 5.18. whether any of the Revised Profit Forecast, the Likely 1H10 Financial Result, the Material Information, the First Revised FY10 Net Debt Forecast or the Second Revised FY10 Net Debt Forecast was information that a reasonable person would expect to have a material effect on the price or value of the Respondent's shares;
- 5.19. whether, if so, the Respondent contravened s 674(2) of the *Corporations Act* by failing to disclose the Likely 1H10 Financial Result, the Revised Profit Forecast, the Material Information, the First Revised FY10 Net Debt Forecast and/or the Second Revised FY10 Net Debt Forecast as soon it was or ought to have been aware of that information;
- 5.20. whether, if so, the failure to disclose the Likely 1H10 Financial Result, the Revised Profit Forecast, the First Revised FY10 Net Debt Forecast, the Second Revised FY10 Net Debt Forecast and/or the Material Information as soon it was or ought to have been aware of that information caused the Respondent's share price to be higher during any part of the Relevant Period than it would have been had those matters been disclosed as soon as the Respondent was or ought to have been aware of them and, if so, to what extent or by what amount;
- 5.21. whether the Group Members are persons who suffered loss and damage as a result of the Respondent's contravention or contraventions of s 674(2) of the *Corporations Act* and, if so, what is the proper method of assessment of that loss or damage.

### **Applicant's Address**

6. The Applicants' address for service is:

Place: 485 La Trobe Street  
Melbourne VIC 3000

Email: [service@nufarmclassaction.com.au](mailto:service@nufarmclassaction.com.au)

7. The First Applicants' address is 11 Samara Grove, Gladstone Park, VIC 3043.
8. The Second Applicants' address is c/- LBW Partners, Level 3, 845 Pacific Highway Chatswood, NSW 2067.

9. The Third and Fourth Applicants' address is 1 Greystoke Street, Wheeler Heights, NSW 2097.

**Service on the Respondent**

10. It is intended to serve this application on the Respondent.

DATED: ~~12 August 2011~~ 11 September 2012



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**Slater & Gordon Limited**  
Lawyers for the First, Third and Fourth  
Applicants



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**Maurice Blackburn Pty Limited**  
Lawyers for the Second Applicant

**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