

**Duplicate**

**SUPREME COURT OF QUEENSLAND**

REGISTRY: Brisbane  
NUMBER: 4103/17

First Plaintiff: **MALLONLAND PTY LTD**  
**ACN 051 136 291 (as trustee for the Andrew Jenner Family Trust)**

AND

Second Plaintiff: **ME & JL NITSCHKE PTY LTD**  
**ACN 074 520 228 (as trustee for the Nitschke Family Trust)**

AND

Defendant: **ADVANTA SEEDS PTY LTD**  
**ACN 010 933 061**

**ORDER**

Before: The Honourable Justice Mullins

Date: 10 October 2018

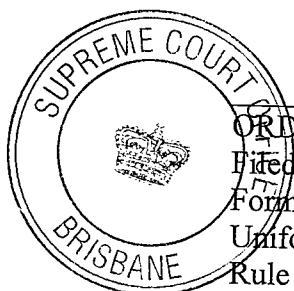
Initiating document: Practice Direction 2 of 2017

**THE COURT DIRECTS THAT:**

1. The order of 28 August 2018 be amended by replacing the words "paragraph 5" with the words "paragraph 6" in paragraph 7 thereof.

*Common Questions*

2. By 19 October 2018, the plaintiffs' solicitors are to provide to the defendant's solicitors draft common questions to be determined at trial.
3. By 2 November 2018, the defendant's solicitors are to respond to the plaintiffs' draft common questions and are to provide to the plaintiffs' solicitors any proposed amendments to the plaintiffs' draft common questions.
4. On or before 16 November 2018, the solicitors and Counsel for the parties are to meet and confer on the common questions with a view to agreeing proposed joint common questions.
5. By 23 November 2018, the solicitors for the parties are to write to the Associate to Mullins J and provide either:
  - a. the proposed joint common questions; or



**ORDER**  
Filed on behalf of the Defendant  
Form 59, Version 1  
Uniform Civil Procedure Rules 1999  
Rule 661

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- b. competing versions of proposed common questions (with the variance between the parties marked up).

*Particulars*

6. By 26 October 2018, the plaintiffs are to issue to the defendant any request for further and better particulars of the Second Amended Defence, and the defendant is to issue to the plaintiffs any request for further and better particulars of the Fourth Amended Statement of Claim and/or the (Second) Amended Reply.
7. By 16 November 2018, the parties are to respond to any requests for particulars made pursuant to direction 6.

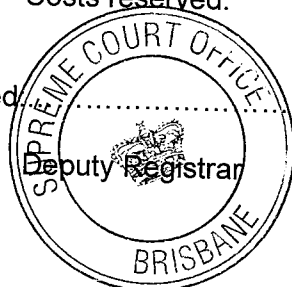
*Discovery*

8. The parties are to complete disclosure by way of the exchange of electronic databases in accordance with Practice Direction 10 of 2011.
9. The parties are to implement the Document Management Plan attached to this Order and marked 'A' for the electronic provision of documents in accordance with direction 8 above.
10. By 19 October 2018, the parties are to write to each other and identify the categories of documents that they expect will be disclosed by each other party.
11. The parties are to exchange critical documents in accordance with the Document Management Plan on or before 21 November 2018.
12. On or before 28 November 2018, the solicitors and Counsel for the parties are to meet and confer with regard to the further disclosure of documents in accordance with item 4.1 of the Document Management Plan.
13. By 30 November 2018, the solicitors for the parties are to write to the Associate to Mullins J and provide either:
  - a. jointly agreed categories of proposed further disclosure to be provided by the parties; or
  - b. competing versions of categories of proposed further disclosure to be provided by the parties (with the variance between the parties marked up).
14. Disclosure in the proceeding is to be provided in accordance with rule 211 of the *Uniform Civil Procedure Rules 1999 (Qld)*.

*Case Conference*

15. The proceeding be listed for a further case conference on 7 December 2018 at 9:30 am.
16. Costs reserved.

Signed



## **Document Management Plan**

### **1. Scope of exchange of documents**

- 1.1 This Document Management Plan aims to limit the scope of the exchange of documents as far as practicable in order to minimise the time and costs associated with the identification, collection, processing, analysis, review and exchange of documents.
- 1.2 This document management plan is consistent with the Court's view that it is inefficient and inappropriate to require the production of more documents than are necessary for the fair conduct of the case.
- 1.3 'Critical documents' are defined as documents in the possession or under the control of a party after a reasonable search, and that are likely to be tendered at trial and to have a decisive effect on the resolution of the matter.
- 1.4 To achieve this limited scope, the parties agree to exchange a number of critical documents for the proceeding.

### **2. Strategies for conducting a reasonable search**

- 2.1 The parties will undertake a reasonable search to locate critical documents.
- 2.2 The strategy that will be used for conducting a reasonable search to locate critical documents is a comprehensive review of all relevant documents and providing the most critical to the resolution of the allegations in issue between the parties or those that the parties discover in the course of a proportionate search of the parties' documents and records.
- 2.3 A 'proportionate search' is a search undertaken by a party in which the party endeavours to locate disclosable documents, while bearing in mind that the cost of the search should not be excessive having regard to the nature and complexity of issues raised by the case, including the type of relief sought and the quantum of the claim.
- 2.4 The sources and categories of documents that are to be excluded from the above search are as follows:
  - (a) supplementary documents that will not be tendered at trial;
  - (b) documents subject to privilege.

### **3. Document naming protocol**

- 3.1 A document naming protocol should be implemented as follows:
  - (a) use of the prefix "PLA" to identify the Plaintiffs and "DEF" to identify the Defendant;
  - (b) the documents be paginated as follows:
    - (i) the first set of numbers are to relate to the category of documents:

- (A) "100" – documents relating to 'shattercane' and Australian grassy off-type sorghum, including origin;
  - (B) "200" – documents relating to production of the AA17 batches, including production controls, testing and treatment;
  - (C) "300" – documents relating to labelling, marketing, bagging and sale of the TREK batches;
  - (D) "400" – documents relating to events following sale of the TREK batches, including occurrence and testing of off-types, and correspondence and papers between the parties, distributors, and Group Members;
  - (E) "500" – documents relating to the Plaintiffs, including land ownership, and purchase, planting and cultivation of seed from the TREK batches;
  - (F) "600" – documents relating to Group Members, including land ownership, and purchase, planting and cultivation of seed from the TREK batches;
  - (G) "700" – documents relating to quantum, including avoidance, mitigation, duration and alleged eradication and/or alleged loss of crop quantity;
- (ii) the second set of numbers is to be used at the respective party's discretion in the format of "001, 002" to distinguish between folders or other relevant divisions, or otherwise left as "000";
  - (iii) the third set of numbers is to be used at the respective party's discretion in the format of "001, 002" to distinguish between sub-folders or other relevant divisions, or otherwise left as "000";
  - (iv) the fourth set of numbers will represent document numbers using a four-digit protocol starting at "0001".

#### 4. Categories of documents to be disclosed as critical documents

- 4.1 Following provision of critical documents, the parties will confer and attempt to agree any further disclosure obligations by consent. They will have regard to the Document Checklist in Practice Direction 10 of 2011 and will update this Plan accordingly.

#### 5. Description of documents

- 5.1 In order to standardise documents, the 'Guidelines for Completion of Form 19 List of Documents' (**Guidelines**) ought to be implemented in the following manner:
  - (a) descriptions of document types shall be limited to those outlined in paragraph 5.3 of the Guidelines;
  - (b) document titles and authors will be derived per paragraphs 6, 7 and 8 of the Guidelines;
  - (c) date information as to documents shall be derived per paragraph 9 of the Guidelines. There shall be no requirement to exchange time detail unless multiple documents bear the same date and time detail is readily apparent.

**6. Management of electronic files**

- 6.1 Parties are to outline documents in the Uniform Civil Procedure Rules Form 19 electronically-managed format.
- 6.2 Parties are to provide emails in native format (i.e. in the format they were sent – e.g. HTML, Plain Text or Rich Text) including attachments, otherwise in PDF or Excel format, searchable where possible.
- 6.3 Parties are to provide copies of documents in PDF or Excel format (searchable where possible), and separately list within relevant categories of documents any documents which cannot be provided in these formats, with an explanation as to why.
- 6.4 In lieu of inspection, each party is to provide a list of documents and copies of documents electronically (preferably by USB stick or external hard drive) on each occasion when disclosure is required.