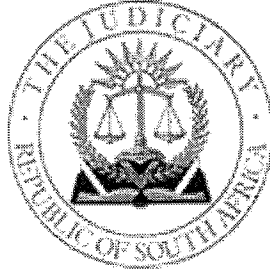


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2019/25309

CASE NO: 2018/12835

CASE NO: 2019/36431

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~
(3) REVISED: 23.6.2020

23.6.2020
DATE

[Signature]
SIGNATURE

In the application between:

TIGER BRANDS LIMITED

First Applicant

ENTERPRISE FOODS (PTY) LTD

Second Applicant

TIGER CONSUMER BRANDS (PTY) LTD

Third Applicant

And

JEZAMAY PILLAY

First Respondent

ASPIRATA AUDITING TESTING AND

CERTIFICATION (PTY) LTD

Second Respondent

DIONNE RAUS

Third Respondent

DELTAMUNE (PTY) LTD

Fourth Respondent

FAMOUS BRANDS LIMITED1st Intervening Party**MONTLHA WELHEMINA NGOBENI & 13 OTHERS**2nd Intervening Party

J U D G M E N T

LAMONT, J:

[1] During, the period January 2017 to May 2018 the country experienced an unprecedented listeriosis outbreak. The outbreak was investigated and documented by the National Institute for Communicable Diseases ("NICD") a division of the National Health Laboratory Services ("NHLS"). The NICD over an extensive period of time delivered reports reflecting the investigations it had undertaken and its opinions based on the investigations. In compiling those reports, the NICD appears to have had unlimited access to all available sources and laboratories. The NICD engaged the services of the Applicant Association for Food Science and Technology and made use of the expertise and assistance of the SAAFOST members' in its investigation. Various personnel were required to produce support documents and take other steps to assist in the investigation to enable it to be as wide-ranging as possible.

[2] Over the period, the NICD obtained access to a multitude of facts upon which it founded its opinion that the strain responsible for the outbreak was L.Monocytogenes ST6. The NICD determined that the ready-to-eat meat products manufactured at the Polokwane factory were the source of the outbreak. Tiger (which is how the defendants will be referred to) closed the Polokwane factory and recalled the ready-to-eat processed meat products. At

or about that date approximately 1000 listeriosis cases had been reported to NICD. Tiger confirmed that independent laboratory test results reflected the presence of the ST6 strain of L.Mono in samples of ready-to-eat meat products manufactured at the Polokwane factory. The listeriosis outbreak ceased during September 2018.

[3] Four classes of persons became infected with L.Mono during the outbreak. Those classes sought and were granted leave to institute a class action against Tiger. While the classes are different as to the identity of the people who formed them, they are identical as to the requirement that the harm was suffered in consequence of the person contracting an infection of *Listeria Monocytogenes*, by ingesting contaminated food products originating from or having passed through the Enterprise meat processing facility at Polokwane over the period 23 October 2016 to 3 September 2018.

[4] The order granting leave directed that the action be conducted in two stages: –

1. In the first stage, the classes were to seek declaratory relief in respect of the respondents' liability to the classes on the basis that members of the classes who did not wish to be bound by the outcome of the first stage might opt out of the class action by delivering notice doing so.
2. If any class was not successful in the first stage of the class action, then all members of the unsuccessful class who did not opt out in accordance with the procedure would be bound by the judgment given at the conclusion of the first stage.

3. If any class was successful in the first stage, then the class action in respect of all such successful clauses would proceed to the second stage.

[5] Pursuant to the court order, the class action members (hereafter referred to as "the claimants") instituted action against Tiger. The claimants (fourteen of them) set out what the nature of the bacteria was and then repeated in detail a wide-ranging set of facts and opinions including the reports of NICD and various press releases of various bodies, including the Minister of Health. The claimants, in the particulars of claim, relied on causes of action based on the Consumer Protection Act Number 68 of 2008 which imposes strict liability on Tiger; a delictual liability based on Tiger producing ready-to-eat processed meat products that it knew or reasonably should have known were susceptible to contamination by L.Mono. Finally, the claimants sought constitutional exemplary punitive damages.

[6] The claimants set out in the particulars of claim that approximately one thousand and sixty eight people were diagnosed with Listeria; two hundred and eighteen people died; four hundred and forty three neonates contracted listeriosis; ninety-three of them died; sixty-eight children between the age of one month and fourteen years contracted listeriosis and none of them died; a large number of women miscarried or gave birth to stillborn babies; and a number of the neonates who survived were permanently disabled and disfigured. The outbreak affected a wide-ranging number of people in a horrific way. The persons responsible face the likelihood of having to pay extensive compensation to them. The trial is likely to be long and complex as

it will deal with wide-ranging sets of facts and opinions covering a period of several months.

[7] It is apparent from the particulars of claim that the claimants have not limited themselves to making allegations as the Rules require but have incorporated wide-ranging sets of facts and opinions in the particulars by referring to them in detail. For example, the claimants' state at paragraph 47 that the factual averments made in the NICD reports cited should be read as averments that are expressly pleaded by the plaintiffs. The claimants do not limit themselves to making legal allegations but incorporate a significant amount of factual evidence and opinion. This results in a long convoluted document filled with factual evidence.

[8] It is apparent from the sets of facts which have been pleaded that the claimants proposed relying upon evidence obtained by *inter alia* NICD from a large number of different sources within the industry as well as opinions obtained from different persons within the industry both in the formulation of its claim and in the evidence which it will lead in due course at the trial.

[9] There is no clarity in the particulars as to whether the opinions are based only upon the facts, which appear in the particulars of claim and the reports referred to, or whether there are other facts upon which the experts relied in formulating their opinions. It would seem that NICD and the sets of persons, including experts, who had access to the entirety of the facts available to the industry considered the facts, decided which facts were

relevant, and applied their skill and expertise to those facts to formulate opinions which are expressed in the particulars of claim. The particulars of claim do not allege that all the facts discoverable have been pleaded. Hence there can be facts in existence, which were omitted because the person sifting through the facts possibly did not discover them, considered them irrelevant, untrue or for some unknown reason chose not to rely on them.

[10] In order, to determine the accuracy of the facts and opinions, it is necessary to identify all the facts, ascertain which are true, then identify those which are relevant, to enable an opinion to be formed, and those which are not. A similar process will be undertaken when consideration is given to whether an opinion is rational. It seems reasonable to expect that as the entire industry was the subject of the investigation, the ambit of facts include all those facts which existed throughout the industry. There is evidence before me which expresses the opinion that all the documents sought by Tiger are relevant to establish what the facts were; which facts are correct, and which facts are relevant to form an opinion. The opinion that all the documents are required may, in due course, be found to be mistaken once all the facts are known. At present, it cannot with precision be determined to what extent the documents are required. It will only be possible to establish what the extent of the enquiry should have been once the documents have been considered. On the face of it, the evidence sought is germane to establish facts, to found an opinion; to controvert the rationality of the opinion expressed in the particulars of claim; and to cross examine witnesses and so on. From a factual point of view, the documents are relevant.

[11] The question is whether the documents are legally relevant. This question is answered by considering the issues raised in the pleadings. In the particulars of claim, the claimants allege that, based on the set of facts, the opinion of the experts is that the L.Mono outbreak emanated at the Polokwane factory, that the claimants became infected with L.Mono and that Tiger caused the harm suffered. Because all the factual issues are raised in the pleadings, the facts become legally relevant. Even if the pleadings are treated as dealing only with allegations the factual issues become relevant as they underpin the allegations. This is presumably why the pleader was not concerned to plead only allegations but pleaded the wealth of facts. The claimants will be required to establish the facts and opinions upon which they rely, and which have been pleaded in the particulars of claim. This will involve evidence of the matters considered *supra* which, put crisply, concern whether or not the facts are all the facts, what the facts are, whether they are true or not and which facts should be relied upon to found the opinion sought to be advanced. It is clear from the issues in the pleadings that the documents sought are relevant.

[12] In the plea, Tiger denies that the outbreak emanated from the Polokwane factory and admits only that L.Mono ST6 was present at the factory. Mono ST6 is a particular strain of L.Mono.

[13] It was submitted during argument that the particulars of claim limited the issue to be determined to L.Mono ST6 and not to L.Mono including all its

strains. The parties to the action all agreed that the issue to be determined concerns L.Mono including all its strains. On a proper reading of the particulars of claim, the claim is not limited to the ST6 strain. The allegations are that the Listeriosis outbreak was caused by L.Mono; leave was given for the class action to be brought in respect of L.Mono - not only the ST6 strain - the plaintiff intends to rely on infection caused by cross-contamination which involves factual questions of when, where and how the product ingested became infected with L.Mono. The order made sanctioning the class action, limited the issue to be determined in the first phase of the action (which is the phase with which we are concerned). The question of whether or not the harm was caused by ingesting contaminated food products which had originated or which had passed through the Polokwane factory did not limit the issue to the ST6 strain only. Although there is a reference in the particulars of claim to the ST6 strain, there are equally references to L.Mono, which would include all strains.

[14] The submission that what had originated and or passed through the Polokwane factory was only the L.Mono ST6 strain. Hence, the question of whether or not Tiger was the sole source or cause of the outbreak was limited to that strain only. The submission made is dependent upon an assumption of the accuracy and completeness of facts alleged. Those facts are of course not established to be complete or accurate.

[15] The cross-contamination issue concerns the ingestion of product which contained L.Mono ST6 from a source other than Tiger. The question

immediately arises whether the other manufacturer's product was, in fact, infected by a Tiger product or whether it became infected in some other way.

[16] The order made when leave was given, sanctioning the class action, to be interpreted in accordance with the usual principles applicable to court orders¹. In my view, on an interpretation of the order, when the court decided the question of quantum was to be separated from the issue of liability, it intended for all the class issues concerning liability to be decided. The question of liability cannot be determined completely if only part of it is determined, namely the part relating to the ST6 strain as opposed to the whole part, namely the part concerning L.Mono including all its strains. In my view, it is inconceivable that liability itself was intended to be dealt with piecemeal. The authorities are well known. See for example *Denel (Edms) Bpk v Voster* 2004 (4) SA 481 (SCA) at 4841-485B. This finding fortifies my view that the separation concerns all strains of L.Mono and not only ST6

[17] Tiger issued subpoenas to obtain evidence from witnesses-persons who are not parties. The persons whose opinions have been expressed, and who hold the relevant factual information are not parties to the action. The only mechanism, by which the evidence required for the matter can be obtained, is through the process of a subpoena. Discovery Rules are inapplicable to persons who are not parties to the litigation.

¹ See: *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 306D.

[18] Tiger recognized this and issued a number of subpoenas requiring a number of non-participants to produce wide-ranging sets of documentation. Tiger accepted that it had sought more than it was entitled to obtain and reduced the ambit of documents during the hearing. At my request, the annexures to the subpoenas were re-drafted to reflect the current state of Tiger's demands. Tiger submitted that it was proper to reduce the ambit of the sets of documents to be produced as the principle of severability applies. That is so, but there is an impact on the costs.

[19] The rights of a litigant to issue a subpoena to obtain documentary evidence are dealt with in the Superior Courts Act number 10 of 2013 ("the Act") and the Rules. Section 35(1) of the Act provides:

"A party to proceedings before any Superior Court in which the attendance of witnesses or the production of any document or thing is required, may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of that court."

[20] The section deals with the right to obtain production of the document as opposed to the right to view the contents of the document. The section establishes a mechanism whereby documents can be obtained for production in court. The right to see the contents will be determined once the documents have been produced.

[21] Rule 38 of the High Court rules regulates the procedure for the procurement of evidence by subpoena. Rule 38 provides:

"(1) (a) (i) Any party, desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than four persons, and service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 4.

(ii) The process for subpoenaing a witness referred to in subparagraph (i) shall be by means of a subpoena in a form substantially similar to Form 16 in the First Schedule.

(iii) If any witness is in possession or control of any deed, document, book, writing, tape recording or electronic recording (hereinafter referred to as a "document") or thing which the party requiring the attendance of such witness desires to be produced in evidence, the subpoena shall specify such document or thing and require such witness to produce it to the court at the trial.

(b) (i) The process for requiring the production of a document referred to in sub rule (1)(a)(iii) shall be by means of a subpoena in a form substantially similar to Form 16A in the First Schedule.

(ii) Within 10 days of receipt of a subpoena requiring the production of any document, any person who has been required to produce a document at the trial shall lodge it with the registrar, unless such a person claims privilege.

(iii) The registrar shall set the conditions upon which the said document may be inspected and copied so as to ensure its protection.

(iv) Within five days of lodgement with the registrar, the party causing the subpoena to be issued for the production of the document shall inform all other parties that the said document is available for inspection and

copying and of any conditions set by the registrar for inspection and copying.

- (v) After inspection and copying, the person who produced the document is entitled to its return."

[22] Production to the registrar does not mean production to the public in general but, unless privilege is claimed, to a person (the registrar) who is to hold the documents pending rulings to be made in respect thereof by both himself and the court. The Rule contemplates that if privilege is claimed the document need not be produced. The word privilege must, in my view, be read to include any reason the witness has to protect the contents from disclosure. I need not deal with the issue of whether the document must be produced even if the witness claims a right of non-disclosure of its contents. In the present matter the witnesses are content to produce subject to a regime protecting all or some of the contents from disclosure.

[23] The witness is ultimately required to appear at the hearing itself with the documents. By no later than that time, the court can deal with the rights of access to the contents of the documents including any claims of privilege, privacy and the terms of disclosure.

[24] The Rules, which are procedural in nature, do not change the substantive law concerning access to the contents of the documents or the

rights of control of them². The fact that the document is produced does not entitle anyone to access to its contents.

[25] If the parties and witness consent to their production, production can take place in advance of the court hearing. The rights of parties to prevent disclosure of the contents of documents which have been produced are safeguarded as the registrar is to maintain control over the documents as the court can rule in due course on the issue. The necessity of early production and the ability to inspect the documents long prior to the trial has been recognized; as this is the only way in which (assuming their production is non-contentious), there can be proper preparation in advance of the hearing. There is no reason in the general course why a court cannot consider the issue prior to the trial, if necessary, to rule on the rights to disclosure. The Rules are intended to facilitate early production, which will aid the identification and settlement of the factual issues to enable the trial to run smoothly on the true factual issues without interruption³.

[26] The right to obtain evidence by way of subpoena is a component of the right to a fair hearing as contemplated by section 34 of the Constitution. The Constitutional Court recognized that:-

"Section 34 fair hearing right affirms the rule of law, which is a founding value of our Constitution. The right to a fair hearing before a court lies at the heart of the rule of law. A fair hearing before a court as a prerequisite to an order

² See: *King v Margau* 1949 (1) SA 661 (W) and *Picked Properties (Pty) Ltd v Northcliff Township (Pty) Ltd* 1972 (3) SA 770 (W)

³ See: *Trust Sentrum (Kaapstad) (Edms) Bpk and Another v Zevenberg and Another* 1989 (1) SA 145 (C).

being made against anyone is fundamental to a just and credible legal order. Courts in our country are obliged to ensure that the proceedings before them are always fair. Since procedures that would render the hearing unfair are inconsistent with the Constitution courts must interpret the legislation and Rules of Court where it is reasonably possible to do so, in a way that would render the proceedings fair"⁴

[27] It is recognized that in order to give effect to the right to a fair hearing an interested party must be placed in a position to present evidence and controvert evidence in a meaningful way. See *Gavic v Status Determination Offices and Other* 2019 (1) SA 21 (CC) where the Constitutional Court held:

"[79] It is nevertheless necessary to state that a person can only be said to have a fair and meaningful opportunity to make representations if the person knows the substance of the case against her. This is so because a person affected usually cannot make worthwhile representations without knowing what factors may weigh against her interests. This is in accordance with the maxim *audi alteram partem* (hear the other side), which is a fundamental principle of administrative justice and a component of the right to just administrative action contained in s 33 of the Constitution.

[80] In order to give effect to the right to a fair hearing an interested party must be placed in a position to present and controvert evidence in a meaningful way. In *Foulds*, Streicher J held that a decision maker was under an obligation to disclose adverse information and adverse policy considerations, and give an affected person an opportunity to respond thereto."

⁴ See: *De Beer NO v North-Central Local Council and South-Central Local Council and Others* 2002 (1) SA 429 (CC) paragraph 11.

See also Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In Re: Masetlha V President of the Republic of South Africa and Another 2008 (5) SA 31 (CC) paragraph at paragraph 25, which provides:-

"Ordinarily courts would look favourably on a claim of a litigant to gain access to documents or other information reasonably required to assert or protect a threatened right or to advance a cause of action. This is so because courts take seriously the valid interest of a litigant to be placed in a position to present its case fully during the course of litigation. Whilst weighing meticulously where the interests of justice lie, courts strive to afford a party a reasonable opportunity to achieve its purpose in advancing its case. After all, an adequate opportunity to prepare and present one's case is a time-honoured part of a litigating party's right to a fair trial."

[28] It is apparent that the mere fact that the documents, which are the subject of the subpoena, are voluminous is not the issue. A subpoena, which requires production of voluminous documents will be proper, provided the documents are relevant and adequately specified to enable the witness to identify them.

[29] The contention of the persons who were subpoenaed is that they should not be obliged to produce documents and that the subpoenas should be set aside.

[30] A subpoena will not readily be set aside. See *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734H-735A:

"Ordinarily, a litigant is of course entitled to obtain the production of any document relevant to his or her case in the pursuit of the truth, unless the disclosure of the document is protected by law. The process of a subpoena is designed precisely to protect that right. The ends of justice would be prejudiced if that right was impeded. For this reason, the Court must be cautious in exercising its power to set aside a subpoena on the grounds that it constitutes an abuse of process. It is a power, which will be exercised in rare cases, but once it is clear that the subpoena in issue in any particular matter constitutes an abuse of the process, the Court will not hesitate to say so and to protect both the Court and the parties affected thereby from such abuse. (*Sher and Others v Sadowitz* 1970 (1) SA 193 (C); *S v Matisonn* 1981 (3) SA 302 (A))"

[31] An unsustainable subpoena must be obviously unsustainable, and this unsustainability must appear as a matter of certainty not merely as a probability.⁵

[32] It must be established accordingly that, as a matter of certainty, the person which issued the subpoena is not entitled to production of the documents. When the court considers the issue, it will do so in the knowledge that the party before it is still to have access to the documents and so will have difficulty to positively state that the documents are definitely to be tendered in evidence at the trial. It will be only after access has been gained

⁵ See: *Sher and Others v Sadowitz* 1970 (1) SA 193 (C) at 195D. See also *Davis v Additional Magistrate, Johannesburg and Others* 1989 (4) SA 299 (W) at 306A

to the document, that the person who sought them will be able to determine their value and hence whether or not they, in fact, will have an evidential value at the trial. For this reason, the consideration of the validity of the subpoena will be generous regarding relevance and the consideration of whether or not documents will in fact be tendered and witnesses in fact testify.⁶

[33] What in fact is relevant, can be decided by one of several (similar) tests including: whether or not the documents contain information which may directly or indirectly enable a party who seeks them to advance his case or damage the opponents case;⁷ whether there is reason to believe that the documents requested will throw light on the issues⁸ and whether it is reasonable to suppose that the documents sought contain information which may directly or indirectly enable the party to advance his own case or to damage the case of the adversary including, that it is a document which may fairly lead to a chain of inquiry which may have either of those two consequences.⁹

[34] In the present matter, the pleadings contain wide-ranging sets of facts and allegations, which I considered *supra*. It seems clear that the trial will traverse those matters and that the documents contained in the lists of documents are germane to Tiger's preparation for the trial and the evidence which will be led at it. All of those who received subpoenas are involved in the industry and are persons who could and who probably did furnish information,

⁶ See: *PFE International and Others v Industrial Development Corporation of South Africa Ltd* 2013 (1) SA 1 (C) at paragraph 29

⁷ *Swissborough Diamond Mines v Government of the RSA* 1999 (2) SA 279 (T) G.

⁸ *Gumede v Subel NO and Others* 2006 (3) SA 498 (SCA) at paragraph 19.

⁹ *Compagnie Financiere et Commerciale du Pacifique v Peruvian Guano* (1882) 11 QBD 55.

opinion and factual data to the NICD. The nature and extent of the information furnished, the nature and extent of information not furnished and the accuracy of the information are relevant to test whether or not the allegations made by the claimants are sustainable and necessary to run the trial. Hence, the wide-ranging set of information sought in the subpoenas is relevant to the action.

[35] Tiger has produced a set of expert opinions, which are to the effect that the documents are needed. There is no reason in advance of seeing the documents to hold that the facts on which they rely are incorrect. There is further no reason in advance of seeing the documents to find that the opinions and their reasoning are flawed. Rationality can be determined once the facts are obtained. For present purposes, I must accept the need for the documents and the rationality of the opinions expressed.

[36] It was submitted that the periods in respect of which documents were sought was extremely wide and unjustified. Tiger has limited the extent of the periods in the latest documents it has provided as annexures to the subpoenas. There is in my view no reason why the period should be limited to the period which was identified by the persons (probably NICD) who participated in the drawing of the reports forming the basis of the particulars of claim. It is simply not apparent without proper investigation what an appropriate period is. The L.Mono outbreak may have started much earlier but not have been noticed and may have continued later unnoticed (although that is unlikely). As the persons who were involved in the drawing of the reports used in the particulars of claim were focused on the ST6 strain, there may

have been other strains over different periods, which caused harm. These facts are simply unknown, and it is unjustified in my view to limit the period without knowledge of facts as this may result in irrationality. It is far more appropriate for proper investigations to take place over a longer period, which will give assistance and insight as to what an appropriate period is. Until the documents are seen, no prediction of what they contain can be made. It would be unfair to Tiger to force it to get the documents piecemeal as and when the disclosed documents reveal the need for further documents to be produced.

[37] It was submitted that a wide-ranging and improperly identified series of documents was sought. The fact that the documents are voluminous and wide-ranging is of itself irrelevant to their production if the documents are relevant to the action. The documents need to be identified sufficiently and accurately to enable the recipient of the subpoena to identify them. All the subpoenas require particular documents, which are sought with reference to the generic type of document for a date. The fact that a period is identified, does not change the character of the request to relate to each day within the period. The fact that numerous documents are sought does not change the character of the request. It remains a request for each document of a particular type. The documents are readily identifiable, as are the dates when the documents came into existence. One of the letters (annexure N) furnished shows this quite clearly.

[38] It is argued that confidentiality per se is not a ground for objecting to the disclosure of documents in our law. In this regard, I was referred

to *Rutland v Engelbrecht* 1956 (2) SA 578 (C) at 579; *Van der Linde v Calitz* 1967 (2) SA 239 (A) at 260; *S v Naicker and Another* 1965 (2) SA 919 (N); *Crown Cork & Seal Co Inc and Another v Rheem South Africa (Pty) Ltd and Others* 1980 (3) SA 1093 (W) at 1099; and *De Ville Judicial Review of Administrative Action in South Africa* (2005) revised first ed at 310.

[39] The fact that documents contain information of a confidential nature does not prevent disclosure. See *Comair Ltd v Minister for Public Enterprises and Others* 2014 (5) SA 608 (GP) 619 per Jordaan J

"The fact that documents contain information of a confidential nature 'does not per se in our law confer on them any privilege against disclosure' (see *Unilever plc v Polagric (Pty) Ltd* 2001 (2) SA 329 (C) at 340A)."

[40] In respect of confidential commercial information Colman J held as follows in *SA Neon Advertising (Pty) Ltd v Claude Neon Lights (SA) Ltd* 1968 (3) SA 381 (W) at 385A – B:

'It was pointed out, on behalf of the respondent, that the applicant is its trade competitor, and that disclosure of what is relevant to the action may also involve disclosure of confidential information which the respondent does not want its competitor to see. The respondent would, I was told, rather abandon part of its claim than make such information available to the applicant. I have some sympathy for the respondent in that regard, but I am unable to assist it. It need disclose nothing that is not material; but what is material, in the wide sense that that word bears in relation to the duty to make discovery, must be disclosed, whatever the commercial consequences may be. . . ."

[41] Confidential commercial information is discoverable. The issue might concern the content of the document, which might require the need for special orders to be made to reduce the ambit of persons entitled to view the information or application of other terms controlling access to the documents, but the principle remains clear, persons who possess discoverable documents can be compelled to produce them. The rights of privacy can be respected by appropriate orders.

[42] A number of persons who had done testing for others and some of those who had submitted samples for testing submitted that the results should not be made available as there might be an impact on their business if results were disclosed. The very reason testing is done is to control quality and if necessary, to disclose results to persons dealing with those issues. The focus on publication of matters concerning the public, particularly where their health is concerned, is on transparency. If anything, the courts, in my view, would lean to production rather than concealment of such records. In any event, the need for a fair trial dictates the need for production. It does not lie in the mouth of a witness to seek to dictate to a party how it should run its litigation.¹⁰

[43] NICD submitted that there was another way the documents could be obtained, namely by Tiger using the Promotion of Access to information Act 2 of 2000. (hereafter PAIA). This course was, in my view, unavailable to Tiger.¹¹

¹⁰ See: *Mvelaphanda Holdings (Pty) Ltd and Another v JS and Others* 2016 (2) 266 GJ para 49.

¹¹ See: *PFE International and others v Industrial Development Corporation of SA Ltd* 2013(1) SA 1 CC.

[44] It was submitted that the rules dealing with discovery provided an option to obtain access to documents. The problem with this is that the persons subpoenaed are not parties. The further problem is that the claimants may not have all the relevant documentation. The extent to which the claimants have documents will only become evident after the documents have been inspected. At present, there is no evidence that all the documents are available from the claimants.

[45] The statutes to which I was referred as containing limitations on the rights to documents and the rights of inspection of their contents, all contemplate the right of courts to make such orders as may be appropriate allowing production and access - for example, section 14 of the National Health Act and PAIA which does not deal with rights being exercised in litigation.

[46] It is my view that Tiger is entitled to obtain production of the documents by way of the subpoenas. It follows that the applications for quashing of the subpoenas and to prevent production must fail. There must be controls placed on the right of inspection of the contents of documents to the extent that the possessors of the documents and owners of that information object to such access. The registrar, in my view, must be directed to place restrictions on access to the contents of the documents to the extent of the objections. The Rules do not expressly provide for a hearing prior to the trial to deal with that issue but I see no reason why in the present matter there should not be an advance hearing if it is necessary.

[47] I see no reason why the documents should not be produced in electronic form. They should be much more manageable in that form and the cost of production will be greatly reduced. I propose to allow the production in electronic form. If there is any difficulty this order can be reconsidered on notice by way of written submission. I did not raise the issue during the hearing and the parties may have submissions they wish to make.

[48] Each party including the intervening parties should pay their own costs. The annexures to the subpoenas were admittedly too wide. In addition, the procedure of when and how to deal with production of documents and access to their contents concerned the witnesses. The witnesses, although the argument was in the context of specificity and privilege, sought to raise questions concerning access to content on the basis it impacts on the obligation to produce to the registrar. I do not think that issue falls to be dealt with until after production but it was not unreasonable to raise the concerns.

[49] For the sake, of convenience the orders have been reproduced in each individual application. The judgment concerns all issues and matters concerning the subpoenas.

[50] Orders and annexures "A" in each individual case are annexed hereto.


C G LAMONT
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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Adv. A. R. G. Mundell SC
 Adv. S. van Aswegen
 VDMA Attorneys

ATTORNEYS FOR ASPIRATA:**COUNSEL FOR RED MEAT:**

Adv. H. Epstein SC
 Adv. M. Osborne

ATTORNEYS FOR RED MEAT:

Fairbridges Wertheim Becker Attorneys

COUNSEL FOR FAMOUR BRANDS:

Adv. D. Berger SC
 Adv. J. Berger
 Adv. N. Kekana
 RHK Attorneys

ATTORNEYS FOR FAMOUR BRANDS:**COUNSEL FOR NHLS:**

Adv. P. Seleka SC
 Adv. F. Karachi
 Lawtons Africa

ATTORNEYS FOR NHLS:**COUNSEL FOR SABS:**

Adv. K. Tsatsawanw SC
 Adv. L. Letsebe
 Moeti Kanyane Attorneys

ATTORNEYS FOR SABS:**DATE OF HEARING:**

13, 14 and 15 May 2020

DATE OF JUDGMENT:

23 June 2020

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION JOHANNESBURG)

CASE NO: 2019/25308

JOHANNESBURG,.....23.6.2020.....

BEFORE THE HONOURABLE JUDGE LAMONT

In the application between:-

TIGER BRANDS LIMITED
ENTERPRISE FOODS (PTY) LIMITED
TIGER CONSUMER BRANDS LIMITED

First Applicant
Second Applicant
Third Applicant

and

JEZAMAY PILLAY
ASPIRATA AUDITING TESTING AND
CERTIFICATION (PTY) LTD
DIONNE RAUSS
DELTAMUNE (PTY) LTD

| | |
|--|---------------------|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | First Respondent |
| 2020 -07- 06 | Second Respondent |
| | Third Respondent |
| | Fourth Respondent |
| GLD-JHB-001 | Case No: 2018/12835 |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

In re

MONTHLA WELHEMINA NGOBENI & 13 OTHERS

Plaintiffs

and

TIGER BRANDS LIMITED
ENTERPRISE FOODS (PTY) LIMITED
TIGER CONSUMER BRANDS LIMITED

First Defendant
Second Defendant
Third Defendant

DRAFT ORDER

HAVING read the documents filed of record and having heard counsel for the parties.

IT IS ORDERED:

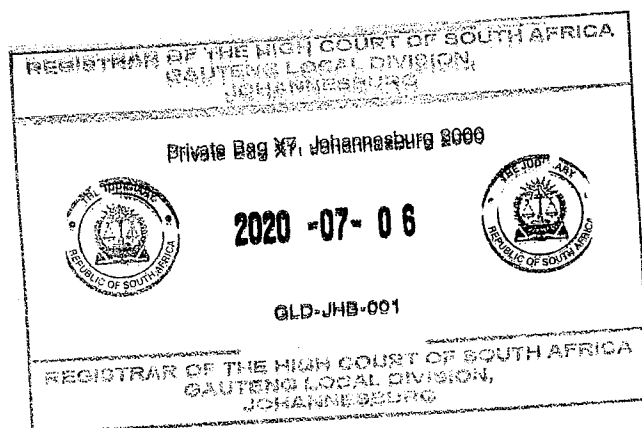
1. Annexure A to the subpoena served on the first and second respondents is deleted.
2. Annexure Aspirata, which is attached to this order, is substituted therefor.
3. Annexure A to the subpoena served on the third and fourth respondents is deleted.
4. Annexure Deltamune, which is attached to this order, is substituted therefor.
5. The first and second respondents are to deliver the documents referred to in the Aspirata annexure to the Registrar within one month of this order being served upon them.
6. The third and fourth respondents are to deliver the documents referred to in the Deltamune annexure to the Registrar within one month of this order being served upon them.
7. The respondents' shall be entitled to deliver hard copies of the documents or electronic copies of the documents.
7. At the time of delivery of the documents to the Registrar the respondents:
 - 7.1. shall identify those documents in respect of which a privilege is and stating the nature and extent of the privilege and

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|---|---|
| REPUBLIC OF SOUTH AFRICA REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  |  |
| 2020-07-06 | |
| GLD-JNB-001 | |

- 7.2. those documents in respect of which there is an objection to any person having access to the contents including the reasons for the objection,
- 7.3. those documents in respect of which there is no objection to production and inspection.
8. The registrar shall comply with the obligations imposed upon him by the Rules and shall make such rulings as he may deem appropriate.
9. The registrar's powers shall include the right to refer any issue upon which he is called to make a ruling to Court.
10. The counter claim is dismissed.
11. Each party is to pay its own costs.

BY ORDER OF THE COURT


REGISTRAR



15 May 2020

X

DELTAMUNE ~~AND ASPIRATA~~

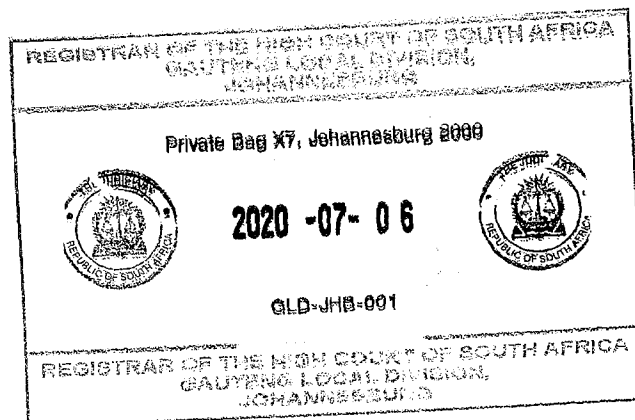
AMENDED ANNEXURE "A"

You are hereby requested to provide clear and legible copies of the following documents:

1. All requests received from any person or entity during the period 1 July 2016 to the present, for detection testing of any *Listeria monocytogenes*.
2. All requests received from any person or entity during the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes*.
3. All data obtained and test results produced during the period 1 July 2016 to the present, for detection testing of *Listeria monocytogenes*.
4. All data obtained and test results produced during the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes*.
5. ...
6. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the requests for testing referred to in paragraphs 1 and 2 above.
7. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the data obtained and test results referred to in paragraphs 3 and 4 above

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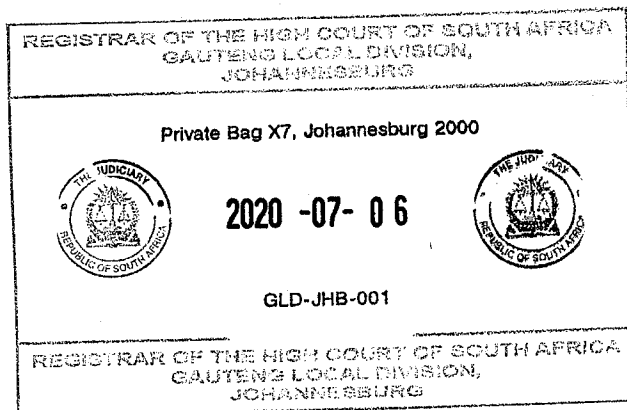
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17. Any and all correspondence, and other written communication (including emails, SMS texts and memoranda) exchanged during the period 1 July 2016 to the present concerning the 2017/2018 Listeriosis Outbreak or Listeria during the period 1 July 2016 to the present, with any person, entity or authority including (but not limited to):

17.1. The National Institute for Communicable Diseases;

17.2. The Department of Health;

17.3. The National Health Laboratory Service;

17.4. The World Health Organisation;

17.5. The Department of Trade and Industry;

17.6. The Department of Agriculture, Forests and Fisheries;

17.7. Any other laboratory; and

17.8. Any other stated or regulatory entity not mentioned above.

18....

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION JOHANNESBURG)

CASE NO: 2019/25308

JOHANNESBURG, 23.6.2020
BEFORE THE HONOURABLE JUDGE LAMONT

In the application between:-


TIGER BRANDS LIMITED
ENTERPRISE FOODS (PTY) LIMITED
TIGER CONSUMER BRANDS LIMITED

1 X 1


First Applicant
Second Applicant
Third Applicant

and

JEZAMAY PILLAY
ASPIRATA AUDITING TESTING AND
CERTIFICATION (PTY) LTD
DIONNE RAUSS
DELTAMUNE (PTY) LTD

| | |
|--|--------------|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  | 2020 -07- 06 |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

Case No: 2018/12835

In re

MONTHLA WELHEMINA NGOBENI & 13 OTHERS

Plaintiffs

and

TIGER BRANDS LIMITED
ENTERPRISE FOODS (PTY) LIMITED
TIGER CONSUMER BRANDS LIMITED



First Defendant
Second Defendant
Third Defendant

DRAFT ORDER

HAVING read the documents filed of record and having heard counsel for the parties.

IT IS ORDERED:

1. Annexure A to the subpoena served on the first and second respondents is deleted.
2. Annexure Aspirata, which is attached to this order, is substituted therefor.
3. Annexure A to the subpoena served on the third and fourth respondents is deleted.
4. Annexure Deltamune, which is attached to this order, is substituted therefor.
5. The first and second respondents are to deliver the documents referred to in the Aspirata annexure to the Registrar within one month of this order being served upon them.
6. The third and fourth respondents are to deliver the documents referred to in the Deltamune annexure to the Registrar within one month of this order being served upon them.
7. The respondents' shall be entitled to deliver hard copies of the documents or electronic copies of the documents.
7. At the time of delivery of the documents to the Registrar the respondents:
 - 7.1. shall identify those documents in respect of which a privilege is and stating the nature and extent of the privilege and



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|---|--|
| REPUBLIC OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  | <div style="font-size: 1.2em; font-weight: bold;">2020 -07- 0 6</div> <div style="font-size: 0.8em;">GLD-JHB-001</div> |
|  | |

- 7.2. those documents in respect of which there is an objection to any person having access to the contents including the reasons for the objection,
- 7.3. those documents in respect of which there is no objection to production and inspection.
8. The registrar shall comply with the obligations imposed upon him by the Rules and shall make such rulings as he may deem appropriate.
9. The registrar's powers shall include the right to refer any issue upon which he is called to make a ruling to Court.
10. The counter claim is dismissed.
11. Each party is to pay its own costs.

BY ORDER OF THE COURT



REGISTRAR

| | | |
|--|--------------|---|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LEGAL DIVISION, JOHANNESBURG | | |
| Private Bag X7, Johannesburg 2000 | | |
|  | 2020 -07- 06 |  |
| OLD-JHB-001 | | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LEGAL DIVISION, JOHANNESBURG | | |

15 May 2020

~~DELTAMINE AND ASPIRATA~~


AMENDED ANNEXURE "A"

You are hereby requested to provide clear and legible copies of the following documents:

1. All requests received from any person or entity during the period 1 July 2016 to the present, for detection testing of any *Listeria monocytogenes*.
2. All requests received from any person or entity during the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes*.
3. All data obtained and test results produced during the period 1 July 2016 to the present, for detection testing of *Listeria monocytogenes*.
4. All data obtained and test results produced during the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes*.
5. ...
6. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the requests for testing referred to in paragraphs 1 and 2 above.
7. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the data obtained and test results referred to in paragraphs 3 and 4 above

8. ...

9. ...

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|--|--------------|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  | 2020 -07- 06 |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

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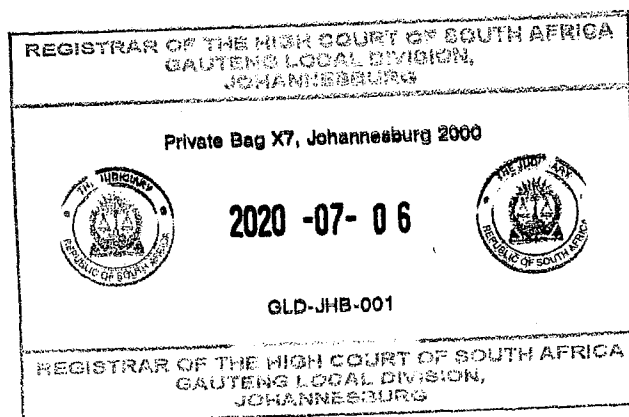
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17. Any and all correspondence, and other written communication (including emails, SMS texts and memoranda) exchanged during the period 1 July 2016 to the present concerning the 2017/2018 Listeriosis Outbreak or Listeria during the period 1 July 2016 to the present, with any person, entity or authority including (but not limited to):

- 17.1. The National Institute for Communicable Diseases;
- 17.2. The Department of Health;
- 17.3. The National Health Laboratory Service;
- 17.4. The World Health Organisation;
- 17.5. The Department of Trade and Industry;
- 17.6. The Department of Agriculture, Forests and Fisheries;
- 17.7. Any other laboratory; and
- 17.8. Any other stated or regulatory entity not mentioned above.

18....

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

JOHANNESBURG,.....23.6.2020.....

BEFORE THE HONOURABLE JUDE LAMONT

Case No: 12835/2018

In the application between:

DELTAMUNE (PTY) LIMITED

Applicant

and

TIGER BRANDS LIMITED

TIGER CONSUMER BRANDS LIMITED

ENTERPRISE FOODS (PTY) LIMITED

RED MEAT INDUSTRY FORUM

THE ASSOCIATION OF MEAT
IMPORTERS AND EXPORTERS

FAMOUS BRANDS MANAGEMENT
COMPANY (PTY) LIMITED

MONTHLA WELHELMINA NGOBENI
AND 13 OTHERS

First Respondent

Private Bag X7, Johannesburg 2000

2020-07-06 Second Respondent

GLD-18500 Third Respondent

Fourth Respondent

Fifth Respondent

First Intervening Party

Second Intervening Party

DRAFT ORDER


HAVING read the documents filed of record and having heard counsel for the parties.

IT IS ORDERED:

1. The application is dismissed.
2. Each party is to pay its own costs.

BY ORDER OF THE COURT


REGISTRAR

| | |
|---|--------------|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  | 2020 -07- 06 |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION JOHANNESBURG | |

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION JOHANNESBURG)

Case No: 2018/12835

JOHANNESBURG,.....23.6.2020.....
BEFORE THE HONOURBLE JUDGE LAMONT

In the application between:

FEDERATED MEATS (PTY) LIMITED

First Applicant

CURLY WEE BOERDERY (PTY) LIMITED

Second Applicant

IBIS PIGGERY (PTY) LIMITED

Third Applicant

KOO KOO ROO CHICKENS CC T/A MARIOS MEAT

Fourth Applicant

MOLARE INVESTMENTS (PTY) LIMITED

Fifth Applicant

NEW STYLE PORK (PTY) LIMITED T/A

Sixth Applicant

YNCA MEATS

WINELANDS PORT (PTY) LIMITED

Seventh Applicant

and

TIGER BRANDS LIMITED

First Respondent

TIGER CONSUMER BRANDS LIMITED

Second Respondent

ENTERISE FOOD (PTY) LIMITED

Third Respondent

In Re:

MONTHLA WELHEMINA NGOBENI & 13 OHTERS

Plaintiffs

and

TIGER BRANDS LIMITED



First Defendant

TIGER CONSUMER BRANDS LIMITED

Second Defendant

ENTERISE FOOD (PTY) LIMITED

Third Defendant

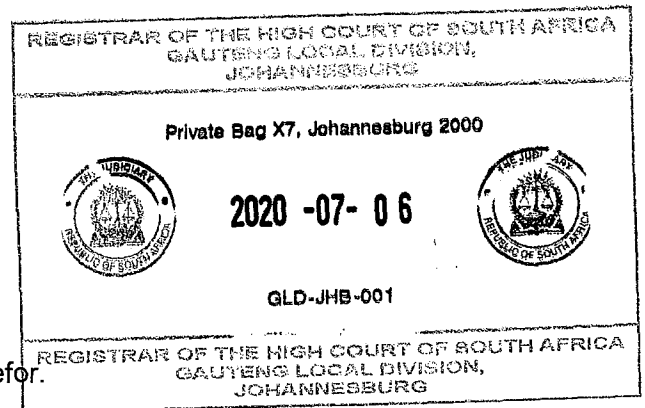
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|--|---|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  |  |
| 2020 -07- 06 | |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

DRAFT ORDER

HAVING read the documents filed of record and having heard counsel for the parties.


IT IS ORDERED:

1. The applicants' application is dismissed.
2. Each party is to pay its own costs.
3. Annexure A to the subpoena is deleted.
4. Federated Meats hereto is substituted therefor.
5. The applicants' are to deliver the documents referred to in the Federated Meats annexure to the Registrar within one month of this order being served upon it.
6. The applicants' shall be entitled to deliver hard copies of the documents or electronic copies of the documents.
7. At the time of delivery, of the documents to the Registrar the applicants shall identify.
 - 7.1. those documents in respect of which a privilege is claimed and state the nature and extent of the privilege and,
 - 7.2. those documents in respect of which there is an objection to any person having access to the contents including the reasons for the objection,
 - 7.3. those documents in respect of which there is no objection to production and inspection.
8. The registrar shall comply with the obligations imposed upon him by the Rules and shall make such rulings as he may deem appropriate.
9. The registrar's powers shall include the right to refer any issue he may rule upon to Court for decision.



BY ORDER OF THE COURT


REGISTRAR

| | |
|--|--------------|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  | 2020 -07- 06 |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

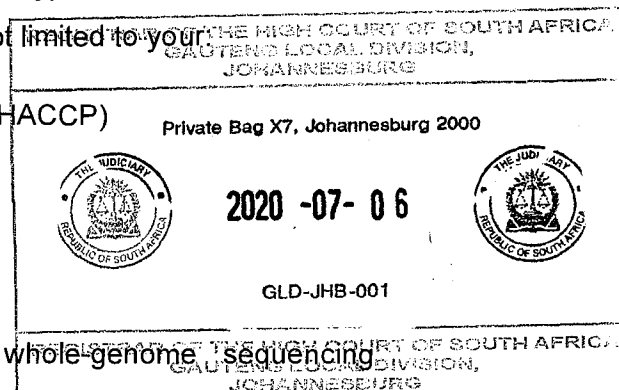
15 May 2020

VENDORS (FEDERATED MEATS & SIX OTHER PARTIES)

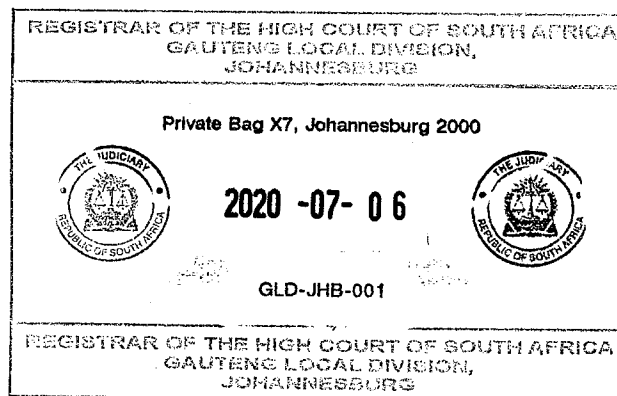
AMENDED ANNEXURE "A"

You are hereby requested to provide clear and legible copies of the following:

1. All test results for the presence of *Listeria monocytogenes* including but not limited to detection testing, enumeration testing, or phenotypic testing on each environmental, food and product sample or swab collected at each of your facilities during the period 1 January 2016 to 3 September 2018.
2. All records or protocols applicable during the period 1 January 2016 to 3 September 2018 regarding any aspect of the control or testing methodology for the presence, enumeration and/or sequence type of microbial hazards including *Listeria monocytogenes* involving but not limited to your
 - (i) Hazard Analysis and Critical Control Points (HACCP)
 - (ii) Method descriptions; and
 - (iii) Sample handling processes;
3. All records of ribotyping, serotyping and whole-genome sequencing undertaken by you or on your behalf of *Listeria monocytogenes* samples (environmental or food) collected from each of your facilities before, during and after the Listeriosis outbreak between 2016 and 2018; and
4. Any correspondence or other written communication, notice, instruction or demand concerning Listeriosis that was exchanged with, received from or sent to any person or entity during the period 1 January 2016 to the present, including but not limited to any of the following entities:



- (i) The Department of Health (DoH);
- (ii) The Environmental Health and Port Health Services of the DoH;
- (iii) The National Institute of Communicable Diseases (NICD);
- (iv) The Core Sequencing Unit of the NICD (CSU);
- (v) The Centre for Enteric Diseases of the NICD (CED);
- (vi) The National Health Laboratory Service (NHLS);
- (vii) The Department of Trade and Industry (DTI);
- (viii) The Department of Agriculture, Forests and Fisheries (DAFF); and
- (ix) The World Health Organisation (WHO).



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION JOHANNESBURG)**

Case No: 2018/12835

JOHANNESBURG,.....23-6-2020.....
BEFORE THE HONOURABLE JUDGE LAMONT

In the application between:-

NATIONAL HEALTH LABORATORY SERVICE


Applicant

and

TIGER BRANDS LIMITED

TIGER CONSUMER BRANDS LIMITED

ENTERPRISE FOODS (PTY) LIMITED

| | |
|--|--------------|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  | 2020 -07- 06 |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

First Respondent

Second Respondent

Third Respondent

In re:

MONTLHA WELHEMINA NGOBENI & 13 OTHERS

Plaintiffs

and

TIGER BRANDS LIMITED

ENTERPRICE FOODS (PTY) LIMITED

TIGER CONSUMER BRANDS LIMITED

First Defendant

Second Defendant

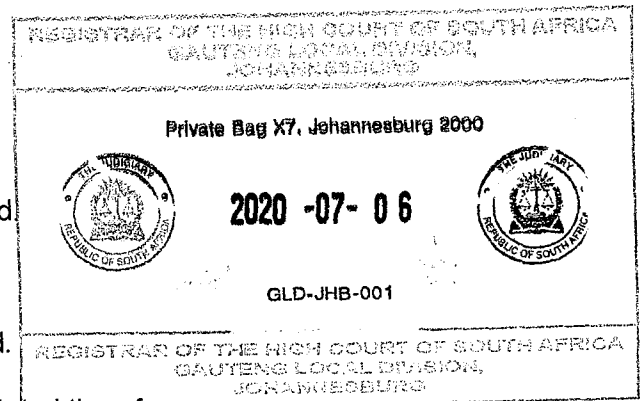
Third Defendant

DRAFT ORDER

HAVING read the documents filed of record and having heard counsel for the parties:-



IT IS ORDERED:-

1. The applicant's application is dismissed
2. Each party is to pay its own costs.
3. Annexure A to the subpoena is deleted.
4. Annexure NHLS/NICD hereto is substituted therefor.
5. The applicant is to deliver the documents referred to in the NHLS/NICD annexure to the Registrar within one month of this order being served upon it.
6. The applicant shall be entitled to deliver hard copies of the documents or electronic copies of the documents.
7. At the time of delivery of the documents to the Registrar the applicants shall identify
 - 7.1. those documents in respect of which a privilege is claimed and stating the nature and extent of the privilege and,
 - 7.2 those documents in respect of which there is an objection to any person having access to the contents including the reasons for the objection
 - 7.3 those documents in respect of which there is no objection to production and inspection
8. The registrar shall comply with the obligations imposed upon him by the Rules and shall make such rulings as he may deem appropriate.
9. The registrar's powers shall include the right to refer any issue upon which he may rule to Court for decision.



BY ORDER OF THE COURT


REGISTRAR

| | | |
|--|--------------|---|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | | |
| Private Bag X7, Johannesburg 2000 | | |
|  | 2020 -07- 06 |  |
| GLD-JHB-001 | | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | | |

X

15 May 2020

NICD

AMENDED ANNEXURE "A"

You are hereby requested to provide clear and legible copies of the following:

1. All data collected or test results for the period 1 July 2016 to the present for detection testing of *Listeria monocytogenes* in samples taken or obtained from any of the Defendants' manufacturing plants situated at:

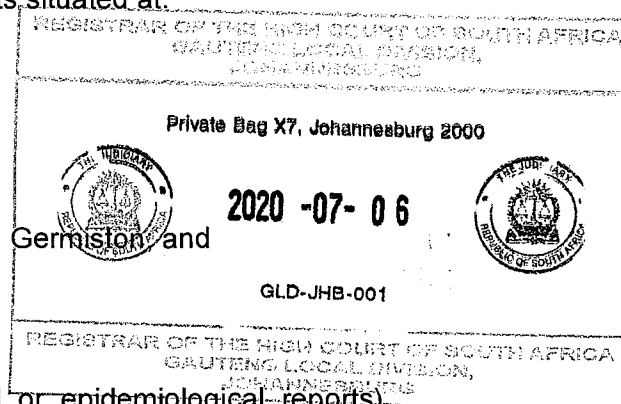
1.1.;

1.2. 28 21st Street, Industria, Polokwane;

1.3. 553 Linton Jones Street, South Germiston, Germiston and

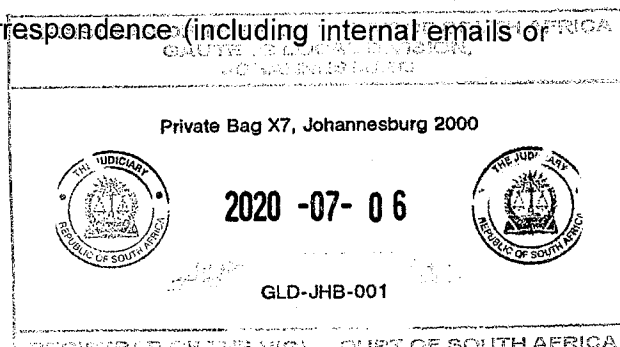
1.4.

2. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or test results referred to in **paragraph 1** above.
3. All data collected or test results for the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes* detected in samples taken or obtained from any of the plants referred to in **paragraphs 1.2 and 1.3** above.
4. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or test results referred to in **paragraph 3** above.
5. All documents dealing with the attendance by any person at any of the plants referred to in **paragraphs 1.2 and 1.3** above during the period 1 July 2016 to the present for purposes of investigating or determining the presence of *Listeria monocytogenes* at such plants.



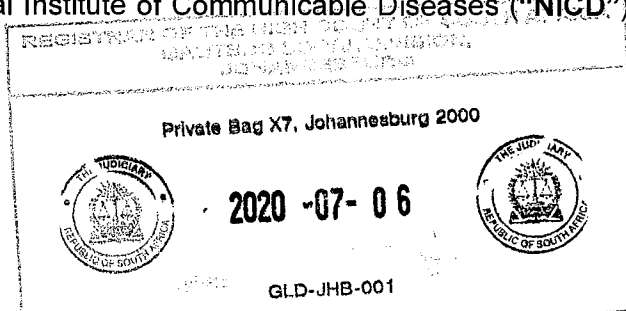
1

6. All data collected or test results for the period 1 July 2016 to the present, for detection testing of *Listeria monocytogenes* in samples taken or obtained from any, location other than the plants referred to in paragraphs 1.1, 1.2, 1.3 and 1.4 above.
7. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or test results referred to in paragraph 6 above.
8. All data collected or test results for the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes* detected in samples taken or obtained from any location other than the plants referred to in paragraphs 1.1, 1.2, 1.3 and 1.4 above.
9. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or test results referred to in paragraph 8 above.
10. All documents dealing with the attendance at any location, other than the plants referred to in paragraphs 1.1, 1.2, 1.3 and 1.4 above, for the purposes of investigating or determining the presence of *Listeria monocytogenes* at such plants for the period 1 July 2016 to the present.
11. All data collected or test results for the period 1 September 2015 to the present, to determine the "lineage" or "sequence type" of any *Listeria monocytogenes* detected at any location or facility, or in any food or in any clinical isolate originating from any living or deceased person or foetus, including, but not limited to any results from Ribotyping or Serotyping or Whole Genome Sequencing.
12. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or



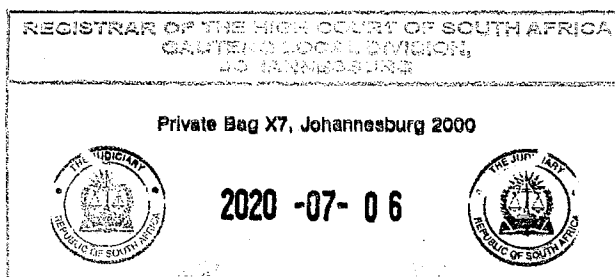
other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or test results referred to in **paragraph 11** above.

13. All data collected or test results during the period 1 September 2015 to the present to determine if the sequence type of *Listeria monocytogenes* at any location or facility, or in any food or in any clinical isolate originating from any living or deceased person or foetus, is "Sequence Type 6" or "ST6".
14. Any and all reports, memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or testing referred to in **paragraph 13** above.
15. All data collected or test results during the period 1 September 2015 to the present, to determine the "relatedness" of any "Sequence Type 6" or "ST6" *Listeria monocytogenes* to any other *Listeria monocytogenes*, including but not limited to results from any Ribotyping or Serotyping or Whole Genome Sequencing.
16. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) prepared, compiled or exchanged in relation to any of the data collected or test results referred to in **paragraph 15** above.
17. Any and all reports (including microbiological or epidemiological reports), memoranda, notes, analyses or correspondence (including internal emails or other internal correspondence) relating to the detection of *Listeria monocytogenes* at any location during the period 1 September 2015 to the present.
18. All records relating to the detection, tracking, monitoring, investigation and reporting of *Listeria monocytogenes* during the period 1 September 2015 to the present, including but not limited to records of each process followed and of steps taken by the National Institute of Communicable Diseases ("NICD")



in response to such detection, tracking, monitoring, investigation and reporting.

19. All reports of Listeriosis during the period 1 September 2015 to the present and any documents generated or exchanged in relation to such reports, including but not limited to, any correspondence exchanged, reports and responses to enquiries and/or questionnaires.
20. Every questionnaire presented to any patient or other member of the public and the responses thereto, or patient interview transcripts, in the course of the investigation into the outbreak of Listeriosis which outbreak was declared to have commenced on or about 1 January 2017 and was declared to have ended on or about 3 September 2018 (**"the 2017/2018 Listeriosis Outbreak"**).
21. Any and all forms completed for and/or received by the NICD from, amongst others, clinicians, infection control nurses and environmental health officers in relation to *Listeria monocytogenes* and Listeriosis during the period 1 September 2015 to the present, including but not limited to the Case Investigation Forms (CIF).
22. All records linking any occurrence of Listeriosis to the *Listeria monocytogenes* detected in samples taken or obtained, from at any of the plants referred to in **paragraphs 1.2 and 1.3** above.
23. All records linking any occurrence of Listeriosis to the *Listeria monocytogenes* detected in samples taken or obtained, from any location, person or food other than the plants referred to in **paragraphs 1.1, 1.2, 1.3 and 1.4** above.
24. All written or electronic records relating to any person (including deceased persons) who suffered or were suspected to have suffered from Listeriosis during the period 1 September 2015 to the present including but not limited to records of any investigations conducted, tests performed and correspondence (including internal correspondence) exchanged.



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION JOHANNESBURG)**

CASE NO: 2019/36431

JOHANNESBURG,.....23.6.2020.....

BEFORE THE HONOURABLE JUDGE LAMONT

In the application between:

SABS COMMERCIAL (PTY) LTD

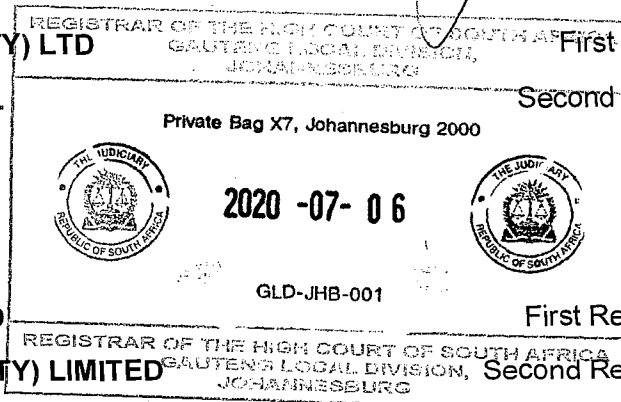
JOSEPH LEOTLELA N.O.

and

TIGER BRANDS LIMITED

ENTERPRISE FOODS (PTY) LIMITED

TIGER CONSUMER BRANDS LIMITED



First Applicant

Second Applicant

First Respondent

Second Respondent

Third Respondent

In re:

MONTHLA WELHEMINA NGOBENI & 13 OTHERS

Plaintiffs

and

TIGER BRANDS LIMITED

ENTERPRISE FOODS (PTY) LTD

TIGER CONSUMER BRANDS LIMITED

First Defendant

Second Defendant

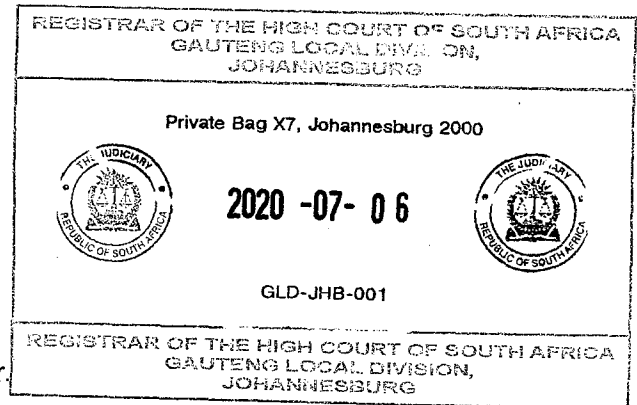
Third Defendant

DRAFT ORDER

HAVING read the documents filed of record and having heard counsel for the parties.

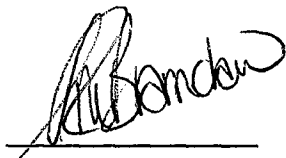
IT IS ORDERED:-

1. The applicants' application is dismissed.
2. Each party is to pay its own costs.
3. Annexure A to the subpoena is deleted.
4. Annexure SABS hereto is substituted therefor.
5. The applicants' are to deliver the documents referred to in the SABS annexure to the Registrar within one month of this order being served upon it.
6. The applicants' shall be entitled to deliver hard copies of the documents or electronic copies of the documents.
7. At the time of delivery of the documents to the Registrar the applicants shall identify:-
 - 7.1. those documents in respect of which a privilege is claimed and shall state the nature and extent of the privilege and,
 - 7.2. those documents in respect of which there is an objection to any person having access to the contents including the reasons for the objection,
 - 7.3. those documents in respect of which there is no objection to production and inspection.
8. The registrar shall comply with the obligations imposed upon him by the Rules and shall make such rulings as he may deem appropriate.





9. The registrar's powers shall include the right to refer any issue on which he is required to rule to Court for the decision.

BY ORDER OF THE COURT



REGISTRAR

| | |
|--|---|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |
| Private Bag X7, Johannesburg 2000 | |
|  |  |
| 2020 -07- 06 | |
| GLD-JHB-001 | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | |

X



15 May 2020

SABS



AMENDED ANNEXURE "A"

You are hereby requested to provide clear and legible copies of the following documents:

1. All requests received from any person or entity during the period 1 July 2016 to the present, for detection testing of any *Listeria monocytogenes*.
2. All requests received from any person or entity during the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes*.
3. All data obtained and test results produced during the period 1 July 2016 to the present, for detection testing of *Listeria monocytogenes*.
4. All data obtained and test results produced during the period 1 July 2016 to the present, for enumeration testing of *Listeria monocytogenes*.
5. All written books, manuals, guides, procedures, policies, methods, standards, rules, instructions, regulations or protocols used during the period 1 July 2016 to the present in relation to the detection testing or enumeration testing of *Listeria monocytogenes*.
6. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the requests for testing referred to in paragraphs 1 and 2 above.
7. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the data obtained and test results referred to in paragraphs 3 and 4 above

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|--|---------------------|---|
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | | |
| Private Bag X7, Johannesburg 2000 | | |
|  | 2020 -07- 06 |  |
| GLD-JHB-001 | | |
| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | | |

8. All requests received from any person or entity during the period 1 July 2016 to the present, for the testing of any *Listeria monocytogenes* to determine its "lineage" or "sequence type", including, but not limited to any requests for Riboprinting or MSLT or Serotyping or Whole Genome Sequencing.
9. All data obtained and test results produced during the period 1 July 2016 to the present, to determine the "lineage" or "sequence type" of any *Listeria monocytogenes*, including, but not limited to any results from Riboprinting or MSLT or Serotyping or Whole Genome Sequencing.
10. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the test results referred to in paragraph 9 above
11. All requests received from any person or entity during the period 1 July 2016 to the present, for testing of *Listeria monocytogenes* to determine if it is "Sequence Type 6" or "ST6".
12. All data obtained and test results produced during the period 1 July 2016 to the present, to determine if *Listeria monocytogenes* is "Sequence Type 6" or "ST6".
13. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the test results referred to in paragraph 12 above.
14. All requests received from any person or entity during the period 1 July 2016 to the present, for testing to determine the "relatedness" of any "Sequence Type 6" or "ST6" *Listeria monocytogenes* to any other *Listeria monocytogenes*, including but not limited to Riboprinting or MSLT or Whole Genome Sequencing.
15. All data obtained and test results produced during the period 1 July 2016 to the present, to determine the "relatedness" of any "Sequence Type 6" or "ST6"

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| REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG | | |
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|  | 2020 -07- 06 |  |
| GLD-JHB-001 | | |

Listeria monocytogenes to any other *Listeria monocytogenes*, including but not limited to Riboprinting or Whole Genome Sequencing".

16. Any and all reports, memoranda, notes, analyses or correspondence (including but not limited to internal emails or other correspondence) prepared or compiled in relation to any of the test results referred to in paragraph 15 above.

17. Any and all correspondence, and other written communication (including emails, SMS texts and memoranda) exchanged during the period 1 July 2016 to the present concerning the 2017/2018 Listeriosis Outbreak or *Listeria monocytogenes* during the period 1 July 2016 to the present, with any person, entity or authority including (but not limited to):

- 17.1. The National Institute for Communicable Diseases;
- 17.2. The Department of Health;
- 17.3. The National Health Laboratory Service;
- 17.4. The World Health Organisation;
- 17.5. The Department of Trade and Industry;
- 17.6. The Department of Agriculture, Forests and Fisheries;
- 17.7. Any other laboratory; and
- 17.8. Any other stated or regulatory entity not mentioned above.

You are hereby further requested to make available the following:

18. All retained samples or plates of any "Sequence Type 6" or "ST6" *Listeria monocytogenes*.

