

11 November 2016

Senator the Hon G. H. Brandis QC
PO Box 143
Albion DC QLD 4010

BY EMAIL senator.brandis@aph.gov.au

Dear Senator,

1. I, James William Christian ("Christian"), submit this complaint under the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* against:
 - (a) Justice David Yates ("Yates J"), a Justice of the Federal Court of Australia and the docket Judge of the, Federal Court of Australia proceedings – *NSD940/2014 James William Christian v Société des Produits Nestlé SA & Ors* ("Federal Court proceedings");
 - (b) Judge Nicholas Manousaridis ("Manousaridis J"), a Judge of the Federal Circuit Court of Australia and the docket Judge of the, Federal Circuit Court of Australia proceedings – *SYG3214/2013 Société des Produits Nestlé SA & Ors v James William Christian* ("FCC proceedings");
 - (c) Justice Steven Rares ("Rares J"), a Justice of the Federal Court of Australia who heard a matter in the ("Federal Court proceedings");
 - (d) Justice Stephen Burley ("Burley J"), now a Justice of the Federal Court of Australia who appeared as special counsel for the applicants in the ("FCC proceedings") and for the respondents in the ("Federal Court proceedings"), prior to being appointed to the Federal Court of Australia in May 2016; and
2. I respectfully seek that you partake to cause the Houses of the Parliament to each pass a resolution establishing a Commission to investigate specified allegations of misconduct in ("Yates J") having committed perjury and for having conspired with ("Manousaridis J"), ("Rares J"), ("Burley J") and former Justice Annabelle Bennett ("Annabelle Bennett") to pervert the course of justice and to use the judiciary system to facilitate the commercial requirements of King & Wood Mallesons client Nestlé and for the Commission to report to the Houses of the Parliament so they can be well-informed to decide on whether there is evidence that would let the Houses of the Parliament conclude that the specified allegations of misconduct are proved.

A. ALLEGATIONS OF ("YATES J") PERJURY

3. It is alleged that ("Yates J") committed perjury at a 28 October 2014 hearing in the ("Federal Court proceedings") by knowingly making false statements in an attempt to refute issues of concern raised by ("Christian") about ("Yates J") causing a 42-day stoppage in the granting of the, application for leave to appeal filed by ("Christian") on 16 September 2014 ("app for leave to appeal 16 Sept 2014") to assist Post Holdings ("Post") 6-month delayed closing of the acquisition of, the PowerBar + Musashi brands and related worldwide assets ("PowerBar + Musashi") from Nestlé and about ("Yates J") co-authoring a book with Nestlé IP lawyer, Kate Haddock, partner at, Banki Haddock Fiora ("BHF"), with ("Yates J") and ("Christian") statements from the hearing transcript at page-8:
 - (a) YATES J: "*I can stop you there, Mr Christian. I haven't written a book with Ms Haddock. I don't know what you're talking about.*";

- (b) MR CHRISTIAN: *“Okay.”*;
 - (c) YATES J: *“So you are mistaken.”*;
 - (d) MR CHRISTIAN: *“Well, I don’t know how to – I don’t know what else to say apart from, I’ve got a title here that has your name on it, David Markey Yates and Kate Haddock.”*;
 - (e) YATES J: *“I have absolutely no idea what that’s about. Would you like to tell me what the title is?”*;
 - (f) MR CHRISTIAN: *“Yes. The title is Trademarks & Passing Off. It was written – the publication was written in 1993.”*;
 - (g) YATES J: *“Who published it?”*;
 - (h) MR CHRISTIAN: *“It doesn’t say who the publisher is, but the book is at the State Library of Victoria and that your name, your Honour, and Kate Haddock are authors on the book.”*;
 - (i) YATES J: *“Well, it’s not me. I have written no book and I have written no book with Ms Haddock. There’s another D.M. Yates who practices in the area of intellectual property. I don’t know whether he is the person who is the author of that book with Ms Haddock. It’s not me.”*; and
4. On 3 November 2014 in response to an email from (“Christian”), the other David Yates, a partner at Corrs Chambers Westgarth lawyers, replied by email to (“Christian”) stating:
- “No I am not the author of the book. And that will be the Judge.”*; and
5. On 5 November 2014 an email was sent to the chambers of (“Yates J”) from Nestlé and (“Post”) IP lawyers (“BHF”) stating:
- “Mr Christian’s reference appears to be correct. Although Ms Haddock has no recollection of the event.”*

B. BACKGROUND TO THE (“FCC PROCEEDINGS”) AND (“FEDERAL COURT PROCEEDINGS”)

(“Post”) acquisition of Powerbar + Musashi from Nestlé

- 6. In 2013 when (“Post”) were preparing to acquire (“PowerBar + Musashi”) from Nestlé in a \$500 million cash and stock deal, Nestlé conspired with (“Post”) to approach Arnet Pharmaceutical (“Arnet”) a contract manufacturer of nutritional supplements in the USA, to engage in a conspiracy to cut supply to the (“Christian”) business A-Sashi Vitamins (“A-Sashi”).
- 7. (“Arnet”) co-manufactured for (“A-Sashi”) from December 2012 but refused to continue in November 2013 after Owen Nelson PowerBar + Musashi General Manager caused (“Arnet”) to receive a supply-contract from (“Post”) for cutting supply to (“A-Sashi”). Information detailing (“Arnet”) and (“A-Sashi”) was purposely provided to Owen Nelson by Aldo D’Agostino, Head of Sales Oceania, DHL Global.

Nestlé & (“Post”) conspired with (“Arnet”) to cut supply to (“A-Sashi”) and for King & Wood Mallesons to cause willful & malicious harassment

- 8. On 31 July 2013 Nestlé M&A lawyer Dr John Cusick, special counsel at King & Wood Mallesons, conspired against (“Christian”) engaging in willful and malicious harassment which included filing

a complaint with the Therapeutic Goods Advertising Code Council (“TGACC”) targeting 15 (“A-Sashi”) products in complaint number 2013/07/031, with (“Christian”) advised on 28 November 2013 that the complaint was considered vexatious and withdrawn.

9. On 13 November 2013 (“Arnet”) cut supply to (“A-Sashi”) by refusing to accept an order with US\$ 220,000 pre-payment. (“A-Sashi”) emailed (“Arnet”) President Jose Tabacinic, requesting clarification, with a reply email from Tabacinic stating:

“I was not aware that you had contacted our company before through our International Department (Pilar Vargas and Mie Mie Aung).”; and

10. On 14 November 2013 (“Arnet”) Sales Manager Robert Perez, emailed (“A-Sashi”) stating:

“At the moment we can't initiate commercial activities with you until the situation between your brand A-Sashi and Nestle is clarified.”; and

11. On 21 November 2013 (“Arnet”) Account Manager Pilar Vargas, emailed (“A-Sashi”) stating:

“I can assure you that Jose Tabacinic was well aware of your company and businesses. We had weekly meetings and I informed him about every single detail of your account.”

(“Post”) & Nestlé conspired to commence legal proceedings against (“A-Sashi”) for a collateral purpose of willful & malicious harassment

12. (“Post”) and Nestlé caused (“Arnet”) to cut supply to (“A-Sashi”) and for a collateral purpose of willful and malicious harassment instructed IP lawyers (“BHF”) to file a Musashi trademark action to be brought against (“A-Sashi”) under the *Trade Marks Act 1995* (Cth) filed by (“BHF”) on 20 December 2013 commencing the (“FCC proceedings”) against (“Christian”).

A former solicitor at Nestlé lawyers King & Wood Mallesons and partner at (“Post”) lawyers Baker & McKenzie, (“Manousaridis J”), received the docket for the (“FCC proceedings”)

13. (“Manousaridis J”) received the docket for the Musashi trademark action in the (“FCC proceedings”) 6-months after being appointed to the Federal Circuit Court of Australia and with the application being the first and only trademark case ever heard by (“Manousaridis J”).

(“Post”) delayed closing the acquisition of (“Powerbar + Musashi”) to conceal violations of U.S. federal securities and antitrust laws revealed in the (“FCC proceedings”)

14. On 3 February 2014 (“Post”) announced it entered into a stock and asset purchase agreement to acquire (“PowerBar + Musashi”) from Nestlé with the closing of the acquisition expected to occur in the (“Post”) Q3 2014 fiscal quarter (from 1 April–30 June 2014).
15. On 6 June 2014 at a hearing in the (“FCC proceedings”) and in the (“Christian”) affidavit affirmed on 12 June 2014, material facts exposed willful violations of U.S. federal securities and antitrust laws and contraventions of the *Competition and Consumer Act 2010* (“CCA”) by (“Post”), Nestlé and King & Wood Mallesons and that Nestlé IP lawyers Julie Robb, Margaret Shearer and Marina Olsen at (“BHF”) along with PowerBar + Musashi employees Owen Nelson and Bradley Pritchard committed perjury in cross-examination on 6 June 2014.
16. On 24 June 2014 (“Christian”) gave notice to the Court of intention to bring a claim in the (“FCC proceedings”) against (“Post”), Nestlé and King & Wood Mallesons for unconscionable conduct and conspiring against (“Christian”) in contravention of the (“CCA”) and (“Christian”) also applied to the Court for orders authorising the issuing of subpoenas.

17. On 1 July 2014 ("Post") announced a 6-month delay in closing the acquisition of ("PowerBar + Musashi") and entered into an amended stock and asset purchase agreement with the closing expected to occur in the ("Post") Q1 2015 fiscal quarter (from 1 Oct–31 Dec 2014), to wait for the ("FCC proceedings") to finalise to conceal material facts in Musashi trademark litigation from ("Post") Securities and Exchange Commission ("SEC") mandatory filings, revealing willful violations of U.S. federal securities and antitrust laws.
18. On 4 July 2014 to conceal perjury committed by Nestlé IP lawyers Julie Robb, Margaret Shearer and Marina Olsen at ("BHF") and PowerBar + Musashi employees Owen Nelson and Bradley Pritchard during cross-examination at the 6 June 2014 hearing, ("Manousaridis J") dismissed the ("Christian") application in the ("FCC proceedings") seeking an order authorising the issuing of subpoenas.
19. On 12 August 2014 ("Christian") filed an application in a case in the ("FCC proceedings") to bring a claim against ("Post"), Nestlé and King & Wood Mallesons for unconscionable conduct and conspiring against ("Christian") in contravention of the ("CCA").
20. On 3 September 2014 ("Manousaridis J") delivered judgment and made orders in the ("FCC proceedings") which included extraterritorial orders sought by the applicants, and ("Manousaridis J") erred by not correctly applying the proviso in s 120(2) of the *Trade Marks Act 1995* (Cth) when determining the question of trademark infringement and erred when determining that the A-SASHI word-mark & device-mark were deceptively similar to the Musashi trademark registrations.
21. On 16 September 2014 ("Christian") filed an application for leave to appeal ("app for leave to appeal 16 Sept 2014") commencing the Federal Court of Australia proceedings – *NSD940/2014 James William Christian v Société des Produits Nestlé SA & Ors* ("Federal Court proceedings") to appeal from the 3 September 2014 orders made in the ("FCC proceedings").

("Post") 3 November 2014 buyer's obligation for Powerbar + Musashi

22. ("Post") had an unconditional guaranteed buyer's obligation under the 1 July 2014 amended stock and asset purchase agreement stating:

"The stock and asset purchase agreement may be terminated by mutual consent of the parties and under certain other circumstances, including if the closing of the acquisition has not occurred prior to 3 November 2014."

("Manousaridis J") conspired with ("Yates J") to facilitate the ("Post") closing of the acquisition of ("Powerbar + Musashi") prior to 3 November 2014 while concealing violations of U.S. federal securities and antitrust laws

23. Musashi trademark litigation in the ("FCC proceedings") revealed ("Post") violations of U.S. federal securities and antitrust laws and contraventions of the Australian ("CCA").
24. To avoid the possibility of exposing material facts in the Australian Court proceedings to U.S. federal law enforcement agencies, ("Post") conspired to conceal the ("FCC proceedings") from the reporting of the acquisition of ("PowerBar + Musashi") for ("SEC") mandatory filings and delayed the closing of the acquisition by 6-months to wait for the ("FCC proceedings") to finalise, however the ("FCC proceedings") became protracted and interfered with the ("Post") 3 November 2014 buyer's obligation deadline for the closing of the acquisition.
25. To facilitate the ("Post") closing of the acquisition of ("PowerBar + Musashi") and IP re-assignment of the Australian registered trademarks from Nestlé effective on 20 October 2014 while concealing

Musashi trademark litigation in the (“FCC proceedings”) and the pending appeal in the (“Federal Court proceedings”), (“Manousaridis J”) conspired with (“Yates J”) and the Sydney Registry to fabricate and display a false finalised status of the (“FCC proceedings”) on the Commonwealth Courts Portal (“CCP”) from 17 October–28 October 2014 in sync with (“Yates J”) stopping the (“Christian”) appeal from commencing in the (“Federal Court proceedings”) by (“Yates J”) causing a 42-day stoppage in the granting of the (“app for leave to appeal 16 Sept 2014”) from 16 September–28 October 2014.

C. ALLEGATIONS OF (“YATES J”) CONSPIRING WITH (“MANOUSARIDIS J”)

(“Manousaridis J”) fraudulently finalised the (“FCC proceedings”) in sync with (“Yates J”)

26. It is alleged (“Manousaridis J”) conspired to fabricate and display a false finalised status of the (“FCC proceedings”) on the (“CCP”) from 17 October–28 October 2014 in sync with the (“Yates J”) 42-day stoppage, for (“Post”) to close the acquisition of (“PowerBar + Musashi”) in accordance with agreements while continuing to conceal willful violations of U.S. federal securities and antitrust laws and contraventions of the (“CCA), with the particulars being:

(a) On 3 September 2014 (“Manousaridis J”) made orders for the (“Christian”) application in a case filed on 12 August 2014 in the (“FCC proceedings”), for claims against (“Post”), Nestlé and King & Wood Mallesons for contravention of the (“CCA”), to be filed by 15 October 2014, but on 9 October 2014 (“Manousaridis J”) amended the orders for the claim to be filed by 5 November 2014, causing the (“FCC proceedings”) not to be finalised before the 3 November 2014 guaranteed buyer’s obligation deadline for the (“Post”) closing of the acquisition of (“PowerBar + Musashi”);

(b) To finalise the (“FCC proceedings”) before the (“Post”) 3 November 2014 guaranteed buyer’s obligation deadline, (“Manousaridis J”) conspired with the Sydney Registry to fabricate and display a false finalised status of the (“FCC proceedings”) on the (“CCP”) from 17 October–28 October 2014 in sync with the (“Yates J”) 42-day stoppage from 16 September–28 October 2014, in the granting of the (“app for leave to appeal 16 Sept 2014”) in the (“Federal Court proceedings”), to facilitate the (“Post”) closing of the acquisition of (“PowerBar + Musashi”) and IP re-assignment of the Australian registered trademarks from Nestlé effective on 20 October 2014, with concealment of the (“FCC proceedings”) and (“Federal Court proceedings”) from the reporting of the acquisition for (“SEC”) mandatory filings; and

(c) (“Christian”) sent an email with a screen-save attachment to the Sydney Registry raising the issue of the (“CCP”) fraud and received a reply email contradicting the (“CCP”) fraudulent finalised status and advising that the (“FCC proceedings”) were not finalised at that time with the Duty Registrar email to (“Christian”) stating:

“A check of our CCP from the Court Registry does not reveal that this matter has been finalised as at 17 October 2014. Our version of the CCP for this matter shows there is no finalised date.”; and

(d) (“Manousaridis J”) conspired to conceal the (“CCP”) fraud when (“Christian”) emailed the Associate of (“Manousaridis J”), with a screen-save attachment showing that the (“CCP”) fraudulently displayed a false finalised status of the (“FCC proceedings”) from 17 October–28 October 2014, with the Associate advising by email that the matter would be dealt with at a hearing listed for 19 December 2014, with (“Manousaridis J”) at the hearing on 19 December 2014 stating:

“Don’t you worry about that Mr Christian, just worry about the orders I make.”

("Yates J") put a 42-day stop on the ("Christian") appeal in sync with ("Manousaridis J")

27. It is alleged ("Yates J") conspired to cause a 42-day stoppage in sync with the ("Manousaridis J") fabricated false finalised status of the ("FCC proceedings") on the ("CCP"), for ("Post") to close the acquisition of ("PowerBar + Musashi") in accordance with agreements while continuing to conceal willful violations of U.S. federal securities and antitrust laws and contraventions of the ("CCA), with the particulars being:

(a) ("Yates J") conspired to stop the ("Christian") appeal commencing prior to the ("Post") 3 November 2014 guaranteed buyer's obligation deadline by causing a 42-day stoppage in the granting of the ("app for leave to appeal 16 Sept 2014") from 16 September–28 October 2014 in sync with the ("Manousaridis J") fabricated false finalised status of the ("FCC proceedings") on the ("CCP") from 17 October–28 October 2014, to facilitate the ("Post") closing of the acquisition of ("PowerBar + Musashi") and IP re-assignment of the Australian registered trademarks from Nestlé effective on 20 October 2014, with concealment of the ("FCC proceedings") and ("Federal Court proceedings") from the reporting of the acquisition for ("SEC") mandatory filings.

("Christian") filed subpoenas & interrogatories and a Notice of a Constitutional Matter in the ("FCC proceedings")

28. On 5 December 2014 ("Christian") filed:

(a) Subpoenas to produce documents and interrogatories in the ("FCC proceedings") addressed to Judith Brimer Executive Manager ("TGACC"), to Graeme J McEwen, barrister briefed by ("Post") M&A lawyers Baker & McKenzie to provide a report detailing misconduct of Owen Nelson PowerBar + Musashi General Manager and to Christopher Freeland CEO Baker & McKenzie; and

(b) A Notice of a Constitutional matter under section 78B of the *Judiciary Act 1903* in the ("FCC proceedings") and with notification to the Attorney-General George Brandis.

("Christian") ignored Nestlé and ("Post") settlement offer

29. On 16 December 2014 Nestlé and ("Post") IP lawyers ("BHF") made a settlement offer which ("Christian") ignored, seeking to conceal the subject matter of the ("FCC proceedings") and ("Federal Court proceedings") and for ("Christian") to provide a written undertaking:

(a) not to file any further application in the ("FCC proceedings");

(b) not to file any cross-claim pursuant to your application in a case filed in the ("FCC proceedings") on 12 August 2014;

(c) not to file any proceeding in any court concerning the subject matter of the proposed cross-claim;

(d) to discontinue the ("Federal Court proceedings");

(e) not to disparage Nestlé and ("Post") or any of their related entities; and

(f) to release Nestlé and ("Post") from any and all claims and demands relating to the subject matter of the ("FCC proceedings") and the ("Federal Court proceedings").

("Manousaridis J") denied discovery for the ("Christian") claim to conceal ("Post"), Nestlé and King & Wood Mallesons criminal misconduct

30. On 19 December 2014 ("Manousaridis J") set aside the subpoenas and interrogatories filed by ("Christian") on 5 December 2014 and denied ("Christian") the constitutional right of discovery for the claim against ("Post"), Nestlé and King & Wood Mallesons to be filed in the ("FCC proceedings") by 27 February 2015.

("Christian") filed an application for removal of the claim matter from the ("FCC proceedings") to the High Court of Australia

31. On 14 January 2015 when ("Christian") attempted to lodge documents at 3.55pm at the Melbourne Registry for the High Court of Australia, Mr Weymouth advised that the Registry was closed and that ("Christian") would need to return the next day. Sixteen minutes later at 4.11pm Mr Weymouth mistakenly sent the following email to the email address of ("Christian") and copied it to Sydney registry staff members Lynne Donohoe and Rosemary Musolino, stating:

(a) From: Christopher Weymouth
Date: Wed, 14 Jan 2015 16:11:02 +1100
To: James Christian
Cc: Lynne Donohoe , Rosemary Musolino
Subject: Re: Proposed Application for Removal of matter no. SYG3214/2013

From memory, this man has been in several times. Last year.
I just turned him away at 4pm
Small world Lynne
Chris x

32. On 15 January 2015 with a Court order execution date of 27 February 2015 pending for the ("Christian") claim in the ("FCC proceedings") and ("Christian") denied discovery, ("Christian") filed an application for removal in the High Court of Australia seeking an order pursuant to *Section 40 of the Judiciary Act 1903* for the High Court to remove part of the cause pending in the ("FCC proceedings"), with:

The order sought as follows:

(a) The cause pending, a cross-claim, in the Federal Circuit Court SYG3214/2013 proceedings be removed into the High Court; and

The grounds of which the order sought are:

- (a) By the Court setting aside answers to interrogatories and subpoenas filed on 5 December 2014 by the applicant, the Court denied the applicant a right to the evidentiary and procedural rules of the Court, and in doing so denied the applicant a right to natural justice, which is implied in the Australian Constitution through procedural due process standards and which is implied to include, through expressions of justice, a right to a fair hearing and the lack of bias; and
- (b) The Court made orders in relation to the applicants cross-claim which are unfairly prejudicial, bias and which burden an unrepresented applicant from being able to meet conditions set out in orders 4 & 5 (a, b, c, d & e), made by the Court, which are set to deny the applicant a right to natural justice.

("Post") dumped Musashi at a loss exceeding \$40 million to conceal criminal actions

33. In October 2014 ("Post") acquired ("PowerBar + Musashi") from Nestlé in a \$500 million cash and stock deal, with Musashi valued at an estimated \$45 million. ("Post") dumped Musashi at a loss exceeding \$40 million during the ("Federal Court proceedings"), in a sell-off to Vitaco Holdings ("Vitaco") for \$3.8 million on 1 July 2015 and misrepresented the sell-off for ("SEC") mandatory filings, in the attempt to conceal criminal actions and disconnect from Musashi liabilities revealing that:

(a) ("Post") engaged in a conspiracy with Nestlé and ("Arnet") to cut supply to ("A-Sashi") and for a collateral purpose of willful and malicious harassment caused a Musashi trademark action to be brought against ("A-Sashi") under the *Trade Marks Act 1995* (Cth) filed on 20 December 2013 commencing the ("FCC proceedings"); and

(b) ("Post") willfully violated reporting and disclosure requirements under U.S. federal securities laws when purposefully concealing Musashi trademark litigation in the ("FCC proceedings") and ("Federal Court proceedings") from the reporting of the acquisition of ("PowerBar + Musashi") for ("SEC") mandatory filings, to conceal material facts in both proceedings exposing ("Post") willful violations of U.S. antitrust laws.

Federal Court of Australia aims to deliver reserved judgments within 3 months

34. In both the Federal Court of Australia Annual Report for 2014/15 and the Annual Report for 2015/16, it is stated that:

"The Court has a goal of delivering reserved judgments within a period of three months."; and

"The data indicates that eighty-seven per cent of appeals (both Full Court and Single Judge) were delivered within three months."

D. ALLEGATIONS OF ("YATES J") CONSPIRING WITH ("BURLEY J"), ("RARES J") AND ("ANNABELLE BENNETT") TO CAUSE AN 8-MONTH & 2-DAY STOPPAGE ON DELIVERING A RESERVED JUDGMENT IN THE ("FEDERAL COURT PROCEEDINGS") TO FACILITATE J.P. MORGAN, CITIGROUP AND ("POST") MATERIAL NON-DISCLOSURE

35. ("Yates J"), ("Annabelle Bennett") and ("Rares J") heard matters in the ("Federal Court proceedings") while ("Burley J") appeared as special counsel in the ("FCC proceedings") and the ("Federal Court proceedings") for Nestlé, ("Post") and ("Vitaco"). Attorney-General George Brandis appointed ("Burley J") to the Federal Court of Australia in May 2016 to fill the vacancy left by ("Annabelle Bennett") who returned to practice at ("5 Wentworth") where ("Annabelle Bennett") mentored ("Burley J") from 1993 until the appointment of ("Annabelle Bennett") to the Federal Court of Australia in 2003. When ("Burley J") came to the NSW bar in 1993 he read with ("Yates J") and ("Rares J") and was given his red-bag by ("Annabelle Bennett"). In March 2016 when ("Annabelle Bennett") departed from the Federal Court of Australia to make way for the appointment of ("Burley J"), ("Annabelle Bennett") passed on the mantle of SSPJ – Senior Sydney Puisne Judge to ("Rares J").

36. It is alleged ("Yates J") conspired to cause an 8-month & 2-day stoppage on delivering a reserved judgment from 2 March–4 November 2015 and to ensure pre-determined outcomes with ("Rares J") and ("Annabelle Bennett") in the ("Federal Court proceedings"), to facilitate the ("Post") on-sell of the Musashi brand to ("Vitaco") for the ("Vitaco") \$332 million initial public offering ("IPO") and for the joint lead managers for the ("IPO"), J.P. Morgan and Citigroup, to avoid the consequences of civil liability, civil penalty and criminal liability provisions for contraventions of disclosure requirements under the *Corporations Act 2001* for the prospectus filed on 24 August 2015 with

ASIC for the ("Vitaco") ("IPO") closed on 11 September 2015, for having purposefully concealed Musashi trademark litigation in the ("Federal Court proceedings"), with the particulars being:

- (a) ("Yates J") conspired to ensure a stoppage on the possibility of ("Christian") filing an application for special leave to appeal in the High Court of Australia during the ("Vitaco") acquisition of the Musashi brand from ("Post") completed on 1 July 2015 and the ("Vitaco") ("IPO") closed on 11 September 2015; and
- (b) ("Yates J") conspired with ("Annabelle Bennett") to facilitate concealment of contraventions of the *Corporations Act 2001* for non-disclosure of the ("Federal Court proceedings") in the prospectus dated 24 August 2015 filed with ASIC for the ("Vitaco") ("IPO"), with the particulars being:
 - (i) ("Annabelle Bennett") ensured a 21-day stoppage on the ("Christian") 31 August 2015 application in a case ("31 Aug 2015 interlocutory application") seeking the joinder of correct parties to the ("Federal Court proceedings"), in ("Annabelle Bennett") giving instructions to the Sydney Registry for the application to remain unprocessed for 21-days until 21 September 2015, 10-days after the ("Vitaco") ("IPO") closed on 11 September 2015;
 - (ii) ("Annabelle Bennett") ensured the ("Vitaco") entities listed in the 24 August 2015 prospectus, the share & asset sale agreement and the ("31 Aug 2015 interlocutory application"), as the purchasers on 1 July 2015 of the Musashi brand, Vitaco Health Australia Pty Ltd & Health Foods International Ltd, not to be joined as parties;
 - (iii) ("Annabelle Bennett") ensured an entity not listed in the 24 August 2015 prospectus, Vitaco Health IP Pty Ltd, which was re-assigned the Musashi intellectual property ownership on 21 September 2015 in an agreement drafted that day 2 hours prior to the ("Annabelle Bennett") hearing of the ("31 Aug 2015 interlocutory application"), to be joined as a party to the ("Federal Court proceedings") on 21 September 2015, 10-days after the ("Vitaco") ("IPO") closed on 11 September 2015;
 - (iv) ("Annabelle Bennett") ensured the ("31 Aug 2015 interlocutory application") filed by ("Christian") to be listed on the ("CCP") after the ("Vitaco") ("IPO") closed and as a directions hearing and not correctly listed as an interlocutory application hearing; and
- (c) ("Yates J") conspired with ("Rares J") to facilitate concealment of contraventions of the *Corporations Act 2001* for non-disclosure of the ("Federal Court proceedings") in the prospectus dated 24 August 2015 filed with ASIC for the ("Vitaco") ("IPO"), with the particulars being:
 - (i) ("Rares J") ensured a ("Vitaco") entity, the fifth respondent/cross appellant: Vitaco Health IP Pty Ltd, a party to the ("Federal Court proceedings"), not to be listed on the ("Rares J") 18 November 2015 judgment and orders made; and
- (d) ("Yates J") conspired with ("Rares J") to facilitate concealment of violations of reporting and disclosure requirements under U.S. federal securities laws, for non-disclosure of the ("FCC proceedings") for ("Post") ("SEC") mandatory filings, caused by the attempt to conceal material facts in the proceedings revealing violations of U.S. antitrust laws and contraventions of the ("CCA"), with the particulars being:
 - (i) ("Rares J") ensured two ("Post") entities, the third respondent/cross appellant: Premier Nutrition Corporation & the fourth respondent/cross appellant: Post Foods Australia Pty

Ltd, both parties to the (“Federal Court proceedings”), not to be listed on the (“Rares J”) 18 November 2015 judgment and orders made; and

With particulars relating to (“Burley J”) and (“Annabelle Bennett”) conspiring to ensure the (“31 Aug 2015 interlocutory application”) remained unprocessed during the (“Vitaco”) (“IPO”) being that:

37. On 31 August 2015 (“Christian”) filed the (“31 Aug 2015 interlocutory application”) by eLodgment seeking the Musashi registered purchasers, Vitaco Health Australia Pty Ltd & Health Foods International Ltd, to be joined as parties to the (“Federal Court proceedings”); and

38. On 1 September 2015 (“Christian”) called the Sydney Registry of the Federal Court of Australia and spoke to team member Joshua Goldshaft about the status of processing the (“31 Aug 2015 interlocutory application”) with Joshua Goldshaft stating:

“We are still waiting for instructions from Bennett J chambers but it should be processed by the end of today. Applications are normally processed within 24 hours.”; and

39. On 2 September 2015 due to the (“31 Aug 2015 interlocutory application”) still remaining unprocessed, (“Christian”) emailed Timothy Gonski the Associate of Bennett J stating:

“For her Honours attention, I respectfully request the interlocutory application filed on 31 August 2015 to join Vitaco Holdings Limited (‘VIT’) as a party be dealt with as a matter of urgency as it is negligent of both the respondents and (‘VIT’) not to have made the application within these proceedings at the time of the acquisition of Musashi by (‘VIT’) in July 2015 and not to comply with ASX Limited listing rules in relation to disclosure obligations within the (‘VIT’) IPO period expected to close 11 September 2015.”; and

40. On 2 September 2015 with IP lawyers (“BHF”) acting for Nestlé, (“Post”) and (“Vitaco”) not responding to service of the (“31 Aug 2015 interlocutory application”) Timothy Gonski the Associate of Bennett J emailed the IP lawyers (“BHF”) and copied (“Christian”) stating:

“Would the respondents/cross-appellants please inform the Court of their position on the filing of this interlocutory application.”; and

41. On 7 September 2015 with IP lawyers (“BHF”) still not responding to service of the (“31 Aug 2015 interlocutory application”), Timothy Gonski the Associate of Bennett J sent another email to the IP lawyers (“BHF”) and copied (“Christian”) stating:

“Their Honours are surprised that the respondents/cross-appellants have not responded to the application (and my email from 2 September 2015) as the interlocutory application concerns the respondents.”; and

42. On 7 September 2015 IP lawyers (“BHF”), partner Ms Julie Robb, emailed Timothy Gonski the Associate of Bennett J stating:

“I apologise to their Honours for the delay in response. I have sought, but have thus far not received instructions in respect of your email of 2 September. I hope to receive instructions overnight, and to be in a position to provide a substantive response tomorrow. I will contact you again then in any event.”; and

43. On 8 September 2015 IP lawyers (“BHF”), partner Ms Julie Robb sent another email to Timothy Gonski the Associate of Bennett J advising (“Burley J”) will be able to inform their Honours further on 10 September 2015 when he returns from a hearing in Melbourne, with Ms Robb stating:

"I have now received instructions, subject to conferring with senior counsel. I am informed by his clerk that Mr Burley is in a hearing in Melbourne that finishes tomorrow. I therefore expect to be able to inform their Honours of my clients' position by Thursday morning (10.09.15).";
and

44. On 17 September 2015 Timothy Gonski the Associate of Bennett J emailed ("Christian") and IP lawyers ("BHF"), stating:

"Due to the complexity of this interlocutory application, the matter will be re-listed for directions before Bennett J on Monday, 21 September 2015 at 9.30am."

Conspirators move to conceal Musashi liabilities

45. Owen Nelson PowerBar + Musashi General Manager, after 25 years with Nestlé, was dismissed to conceal the conspiracy.

46. Pilar Vargas ("Arnet") International Account Manager, after 13 years with ("Arnet"), was dismissed to conceal the conspiracy.

47. Aldo D'Agostino DHL Global Head of Sales Oceania, after 10 years with DHL, was dismissed to conceal the conspiracy.

48. Donna Bessell Nestlé Head IP Adviser Oceania, after 25 years with Nestlé, was dismissed to conceal the conspiracy.

49. ("Post") and Nestlé IP lawyers, ("BHF"), are no longer listed on IP Australia as the legal representative for ("Post") and Nestlé trademarks.

In accordance with the particulars of this complaint it is my contention that:

50. Reasonable grounds and evidence exist to provide for a Commission to find and report to the Houses of the Parliament that the specified allegations of misconduct against ("Yates J"), ("Manousaridis J"), ("Rares J") and ("Burley J") are proved, and

51. Both Houses of the Parliament to pray for the removal of ("Yates J"), ("Manousaridis J"), ("Rares J") and ("Burley J") in accordance with paragraph 72(ii) of the Constitution.

Yours faithfully



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Please note that this complaint has been individually addressed and distributed by email to all Members and Senators in the Houses of the Parliament.