THE KIWIFRUIT CLAIM

MEDIA STATEMENT

Friday 3 October 2014

FOR IMMEDIATE RELEASE

KIWIFRUIT CLAIM RESPONDS TO INACCURATE INFORMATION

The Kiwifruit Claim has today corrected inaccurate information being promulgated to kiwifruit growers and post-harvest operators. The correct position is:

- The case has been thoroughly reviewed over 24 months and the professional assessment is that it is highly meritorious.

- Growers and post-harvest operators with estimated losses above the litigation funder's threshold of $200 million have now signed up to The Kiwifruit Claim. This means that, subject to final legal checks on the documentation, the case will be going ahead.

- The final draft of the Statement of Claim, which has been under development for several months pending sign-up, will be completed by Friday 17 October. It will be made available to all registered plaintiffs and, subject to court rules, to any other interested parties entitled to receive a copy.

- The litigation funders have advised that they will support the claim and that no further funds can be or will be sought from plaintiffs.

- There will be transparency around the funding arrangements and the conduct of LPF. The funding arrangements for the claim are non-controversial, in line with existing precedent and require the consent of the High Court, and LPF will be subject to the supervision of the High Court.

- It is incorrect, contrary to advice given to some growers, that this case relies on specific provisions of the Biosecurity Act 1993 to proceed. The case is not based on statute law but on the common law, specifically the tort of negligence. In carrying out their duties under the

Biosecurity Act 1993, the Crown, by its officials and agents, owed a duty of care to New Zealand kiwifruit growers, which they did not meet. This negligence allowed Psa into New Zealand and the Crown is liable for damages that have flowed from it.

- There were obvious deficiencies in the way in which MAF failed to administer its functions and obligations, as identified in the Sapere Report. This created the circumstances in which imports of material were allowed and the attendant risk of incursion. In addition, we have gone further since that report and also positively identified the pathway, including with DNA testing, for the incursion of Psa-V into New Zealand from the Shaanxi province in China, and MAF's responsibility for that.

- There is no legal nor we believe any political link between the case and the statutes and regulations that govern the structure of the industry. To the contrary, we note that Prime Minister John Key has said on many occasions that his government thinks the current structure works and that it will not be changed without the consent of growers. On Monday, Mr Key said publicly that growers were entitled to pursue this litigation.

- It is not true that The Kiwifruit Claim will take the industry's focus away from growth and direct it to a 'divisive, drawn out, and hugely expensive legal battle". Once signed up to the claim for capped contributions of $500, $1000 or $1500, the class action will occur in the background with growers able to focus on the future of their businesses and not on the past. Everyone involved in The Kiwifruit Claim feels a tremendous professional and personal responsibility to do whatever they can for growers to secure them a successful outcome and fair compensation for the losses they have suffered as a result of negligence by the Crown.

- The Kiwifruit Claim's legal advisors include Alan Galbraith QC, Matthew Dunning QC and Parker & Associates.

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