

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

Case No.: 12835/2018

In the matter between:

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| MONTLHA WELHEMINA NGOBENI | First Applicant |
| CLINTON GREGORY CHINULA | Second Applicant |
| MAMORAKE TEBOGO NTJANA | Third Applicant |
| GEORGE PHILIPPUS COETZEE | Fourth Applicant |
| PRESENDRIE GOVENDER | Fifth Applicant |
| ANNELIZE LE ROUX | Sixth Applicant |
| XOLILE BOSCH | Seventh Applicant |
| RAJESH KUMAR MISRA | Eighth Applicant |
| SEBASTIAN LAURENT STEPHEN
SCHWAGELE-FAN MORIZ | Ninth Applicant |
| SHEREZE CURTIS | Tenth Applicant |
| ALANA JULIE | Eleventh Applicant |
| JOHAN PIETER KEISER | Twelfth Applicant |
| THATO OSCAR MATHOLE | Thirteenth Applicant |
| CARLA VERLAAT | Fourteenth Applicant |
| And | |
| TIGER BRANDS LTD | First Respondent |
| ENTERPRISE FOODS (PTY) LTD | Second Respondent |
| TIGER CONSUMER BRANDS LTD | Third Respondent |

DRAFT ORDER

By consent between the parties, an order is hereby granted in the following terms:

1. The following four individuals are joined as applicants:
 - 1.1 **ALANA JULIE** as the eleventh applicant.
 - 1.2 **JOHAN PIETER KEISER** as the twelfth applicant.
 - 1.3 **THATO OSCAR MATHOLE** as the thirteenth applicant.
 - 1.4 **CARLA VERLAAT** as the fourteenth applicant.
2. **TIGER CONSUMER BRANDS LTD** (Registration number 1972/006590/06) is joined as the third respondent.
3. It is declared that the following groups of persons constitute classes for purposes of the class action described in paragraph 4 below:
 - 3.1 Individuals who contracted – but did not die as a consequence of – an infection of *Listeria monocytogenes* as a result of 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 (the first class).
 - 3.2 Individuals who, while *in utero*, contracted — but did not die as a consequence of — an infection of *Listeria monocytogenes*, as a result of

their mothers 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, or who suffered adverse health consequences as a result of their mothers having contracted listeriosis in this manner (the second class).

3.3 Individuals who were dependent upon another person who died as a consequence of 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 (the third class).

3.4 Individuals who were and/or are in fact maintaining another person who contracted an infection of *Listeria monocytogenes*, whether or not the other person died as a consequence of the infection, by —

3.4.1 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; or

3.4.2 Their mothers ingesting such contaminated food products whilst carrying the other person *in utero*

(the fourth class).

4. The first to fourteenth applicants (“the applicants”) are granted leave to act as representatives of the classes in an action claiming damages from the

respondents, which the applicants allege were caused by an infection of *Listeria monocytogenes*, contracted by —

- 4.1 members of the first class;
- 4.2 members of the second class;
- 4.3 the breadwinners of members of the third class; and
- 4.4 the individuals who were and / or are factually maintained by members of the fourth class;

who ingested, or whose mothers ingested, food products that originated from, or passed through, the Enterprise meat processing facility at Polokwane over the period 23 October 2016 to 3 September 2018 (“the class action”).

5. It is recorded that, in consenting to this order, the respondents:
 - 5.1 do not admit that any of the classes or any member of any class has a sustainable claim in law, has a valid cause of action or has established any *prima facie* claim in respect of any of the proposed claims against the respondents or that the respondents are liable to any class or member of a class; and
 - 5.2 reserve their right to raise any exception or other challenge to any aspect of any claim brought under the class action.
6. Richard Spoor Incorporated Attorneys and LHL Attorneys Incorporated are certified as the joint legal representatives of the classes for purposes of the class action.

7. The class action will be conducted in two stages:
 - 7.1 In the first stage, the classes shall seek declaratory relief in respect of the respondents' liability to the classes, on the basis that members of the classes who do not wish to be bound by the outcome of the first stage may opt-out of the class action by delivering notice thereof as contemplated in paragraph 8 below.
 - 7.2 If any class is 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 set out in paragraph 8 below, will be bound by the judgment given at the conclusion of the first stage.
 - 7.3 If any class is successful in the first stage, then the class action in respect of all such successful classes will proceed to the second stage.
 - 7.3.1 In such event, members of the classes who did not opt-out in the first stage will be bound by the judgment given at the conclusion of the first stage and will be required to opt-in to the second stage of the class action;
 - 7.3.2 There will be a second notification process after the first stage and before the opt-in for the second stage to make parties aware of the need to give notice of their election to be included in the second stage. The notification process as well as the means to opt-in must be approved by the trial court at the end of the first stage; and
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- 7.3.3 members of the classes who did not opt-out in the first stage may not pursue their claims against the respondents unless they opt-in to the second stage of the class action.
- 7.4 The class lawyers undertake to use all reasonable efforts to make direct contact with the minors, who, as a result of the information disclosed during the first stage of the class action, have been identified as falling within any of the classes who are successful in the first stage. Where any minor identified in the first stage cannot be successfully contacted in the manner directed in accordance with clause 7.3.2, a mechanism to come back to the Court for further directions must be approved by the Court.
- 7.5 Only members of the classes who opt-in at the second stage of the class action shall have the benefit of and be bound by the class action as against the respondents who are found to be liable to them.
8. It is ordered that the members of the classes shall be bound by the outcome of the first stage, unless they give notice to Richard Spoor Incorporated Attorneys and/or LHL Attorneys Incorporated in the manner described in Annexure "A" that they do not wish to be so bound, within three months of the date of this order. Richard Spoor Incorporated and/or LHL Incorporated Attorneys will, within 5 (five) days from receipt of any such notice, provide to the respondents copies of the notices received by it as contemplated in this paragraph.

9. The applicants are directed to give notice of the class action to members of the classes, starting on or before 14 January 2019, substantially in accordance with Annexure “A” which notice must be published in the following ways: —

9.1 The National Department of Health (“DOH”) distributing copies of the notice to each patient who had, according to the records of the DOH, contracted listeriosis between 23 October 2016 and 3 September 2018, as well as to the healthcare providers who had treated patients with listeriosis or who suspected a patient of contracting listeriosis between the period of 23 October 2016 and 3 September 2018, to ensure that the patients, their families and dependents are notified of the class action. This distribution includes patients and/or health care providers in both the private and public sector. The DoH, through the Minister of Health, has agreed to distribute copies of the notice as envisaged;

9.2 by publishing the notice for at least a week in the manner identified in the PR and Media Plan attached hereto as Annexure “B”;

9.3 by publishing a link to the notice on the respondents’ websites, and keeping it there for a period of four weeks; and

9.4 by publishing a link to the notice on the public Facebook profile page of the respondents, and on the public Twitter profile @TigerBrands, where it must be kept for a period of four weeks.

10. The applicants are directed to establish and maintain a national toll-free call centre for a period of at least six weeks, starting on or before 14 January 2019, to answer questions from persons who are members of any of the four classes

or who deem themselves potentially to be members of any such class, and to accept opt-out notices in respect of stage one of the class action.

11. The applicants are further directed to ensure that the call centre is staffed by persons appropriately trained to handle the queries and the acceptance of notices, and to ensure that callers can be assisted in all official languages.
12. The parties shall share in equal portion, jointly and severally, the costs associated with the publication of the notice to class members and the national toll-free call centre, as set out in paragraphs 9, 10 and 11 respectively; provided that the respondents liability in this regard shall be limited to a maximum of R1 000 000 ("one million Rands").
13. The parties are granted leave to approach this Court for a variation or amplification of the order, on duly amplified papers and on notice to the other parties, if such party deems it necessary.
14. It is declared that the members of the classes are bound by the contingency fee agreements concluded by the applicants with Richard Spoor Incorporated Attorneys and LHL Attorneys Incorporated in the form of the documents attached as "C", "D", and "E", as if they so contracted as representatives of the classes, save for any member of a class who has opted out as provided for in paragraph 8 above, provided that any settlement that may be reached in the class action shall require a court's approval.

15. It is recorded that, in consenting to this order, the respondents do not agree to pay any fees to Marler Clark LLP, dispute that any legitimate need or reason exists to appoint Marler Clark LLP as consultants to the applicants, and dispute that the applicants have any right to appoint Marler Clark LLP as their consultants. Both the applicants and the respondents acknowledge that the trial court will ultimately determine whether to allow the recovery of Marler Clark LLP's fees or costs.
16. The costs of this application shall be costs in the first stage of the class action.

BY THE COURT REGISTRAR

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