

SETTLEMENT DEED

DATED 31 JULY 2017

Keith George Hardy

AND

Yasminka Jang

AND

Bannister Law

AND

Reckitt Benckiser (Australia) Pty Ltd

AND

Second Floor Litigation Services Pty Ltd

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THIS DEED is made on 31 July 2017

BETWEEN:

- (1) **Keith George Hardy** of 7 Burnett Street, Kaleen, Australian Capital Territory 2617 (**First Applicant**);
- (2) **Yasminka Jang** of 59 Forbes Street, Wollomooloo, New South Wales 2011 (**Second Applicant**) (collectively, the **Applicants**);
- (3) **Bannister Law** of Suite 1, Level 2, 155 Castlereagh Street, Sydney, New South Wales 2000 (**Bannister Law**);
- (4) **Reckitt Benckiser (Australia) Pty Limited ACN 003 274 655** of Level 47, 680 George Street, Sydney NSW 2000 (**Respondent**); and
- (5) **Second Floor Litigation Services Pty Ltd ACN 613 898 043** of 'United Overseas Bank Building', Level 2, 32 Martin Place, Sydney, New South Wales 2000 (**Second Floor**),

(collectively, the **Parties**).

BACKGROUND:

- (A) The Applicants and the Respondent are the parties to Federal Court of Australia Proceeding No. NSD 273 of 2016 (the **Proceeding**), a representative proceeding under Part IVA of the *Federal Court of Australia Act 1976* (Cth) (the **Act**) in which the Applicants, on their own behalf and for and on behalf of the Group Members (as defined in the Third Further Amended Statement of Claim filed by the Applicants on 17 July 2017), claim, among other things, damages from the Respondent on alleged causes of action as pleaded in the Third Further Amended Statement of Claim.
- (B) The Applicants (on their behalf and for and on behalf of the Group Members as representatives of the Group Members pursuant to Part IVA of the Act) and the Respondent have agreed to seek approval of a resolution of the Proceeding from the Federal Court of Australia under section 33V of the Act on the terms and conditions set out in this deed without any admission of liability by the Respondent.
- (C) This deed has been entered into by the Applicants, for and on behalf of the Group Members as representatives of the Group Members pursuant to Part IVA of the Act.

THIS DEED WITNESSES that in consideration of, among other things, the mutual promises contained in this deed, the Parties agree as follows:

1. CONSENT TO FIRST ORDERS AND THE APPROVAL ORDER

The Parties agree to execute all documents, refrain from performing any act incompatible with and do all acts reasonably necessary to comply with the terms of this deed, including but not limited to consenting to the First Orders and the Approval Order.

Bannister Law agrees:

- (a) to comply with any orders of the Court in relation to advertising or notification of settlement of the Proceeding;

- (b) except to the extent necessary to give effect to this deed, not to accept instructions from or to provide any assistance to any person in relation to any matters which are or were at any time the subject of the Proceeding;
- (c) not to take any steps to encourage persons who allege that they have suffered loss or damage as a consequence of any matters which are or were at any time the subject of the Proceeding to:
 - (i) cease to be the Applicants or a Group Member;
 - (ii) object to the First Orders or the Approval Order; or
 - (iii) appeal from the First Orders or the Approval Order,and not to act on behalf of any such persons in respect of any such steps; and
- (d) not to act for or assist any person in respect of any action, complaint, claim or matter against the Respondent in relation to the subject matter of the Proceeding or any part of the Proceeding unless it is to give effect to this deed.

2. COURT APPROVAL

The Parties must take all appropriate steps as may reasonably be required to apply for the First Orders and Approval Order as soon as practicable.

The Applicants are responsible for tendering such expert or other evidence to the Court as may reasonably be required to facilitate the Court making the First Orders and the Approval Order.

3. SETTLEMENT

3.1 Waiver of right of appeal

The Respondent and the Applicants (on their behalf and for and on behalf of the Group Members as representatives of the Group Members pursuant to Part IVA of the Act) agree, upon the making of the First Order and Approval Order, to waive all rights to appeal from those orders.

3.2 Payment of Settlement

Upon the making of the Approval Order:

- (a) the releases provided in clause 5 will become operative;
- (b) the plea in bar provided in clause 6 will become operative;
- (c) the Parties will perform the obligations set out in Schedule 1 to this deed;
- (d) the obligations in clause 9 will become operative.

4. TERMINATION

The Parties agree that this deed immediately terminates and shall be of no force or effect in the event that:

- (a) the Court declines to make the First Orders;

- (b) the Court declines to make the Approval Order; or
- (c) the First Applicant or Second Applicant cease to be Applicants prior to the making of the Approval Order.

For the purpose of clauses 4(a) and (b), the Court will not be taken to have “declined” to make the First Orders or Approval Order if it invites or requires any party to the Proceeding to submit further evidence, make further submissions or provide further information, and, in that event, clauses 4(a) and (b) do not operate until the Court makes a final decision having considered such further evidence, submissions or information.

5. RELEASES

Subject to clause 4:

- (a) the Proceeding as between the Applicants and the Respondent, including the Applicants’ and Group Members’ claims in connection with the Proceeding including, but not limited to, any claim for damages, compensation, interest and legal and administrative costs and disbursements (present and future), is fully and finally settled;
- (b) the Applicants, on their behalf and on behalf of all Group Members, release and discharge the Respondent and each of its related bodies corporate as defined in the *Corporations Act 2001* (Cth) and the present and former directors, servants, contractors and agents of each of them (**Related Parties**) jointly and severally from:
 - (i) any claims made by the Applicants or any Group Member in connection with the Proceeding;
 - (ii) any claim, including future claim, arising out of or related in any way to matters the subject of any part of the Proceeding; and
 - (iii) any claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy that the Applicants or any Group Member has or may have against the Respondent or any of the Related Parties in respect of:
 - (A) the subject matter of any part of the Proceeding; and
 - (B) anything related to the Proceeding including, without limitation, any damage, loss, cost or expense suffered as a result of the subject matter of any part of the Proceeding,

whether arising at common law, in equity, or under statute or otherwise.

6. PLEA IN BAR

Subject to clause 4, any Party bound by this deed may plead this deed in bar to any claim or proceeding by any other Party bound by this deed (including the Applicants or any Group Member) in respect of any claim arising out of or related in any way to the matters which are as at the date of this deed or were at any time the subject of the Proceeding or any part of the Proceeding.

7. RELEVANT PROVISIONS FOR THE BENEFIT OF THE RESPONDENT

The Parties recognise and acknowledge that the Respondent, as the residual beneficiary of the Settlement Sum (as defined in Schedule 1 to this deed), has a legitimate interest to ensure that that sum is properly administered and that payments from that fund are only made to Group Members who submit legitimate claims.

The following paragraphs contained in Schedule 1 to this deed are for the sole benefit of the Respondent and for the protection of the Respondent's interests and may be waived by the Respondent in its absolute discretion:

- (a) paragraphs 4 to 6;
- (b) paragraphs 7 to 15; and
- (c) paragraphs 16 to 18.

8. NO ADMISSIONS

The Respondent makes no admissions.

9. DESTRUCTION OR RETURN OF RESPONDENT'S DOCUMENTS

The Applicants and Bannister Law must, within 15 Business Days after this clause becomes operative, destroy or return to the Respondent's solicitors all documents (including photocopies and electronic documents) that are within their possession, custody or power and any documents within the possession of Second Floor, any expert or Counsel retained by the Applicants, within the following categories:

- (a) the documents discovered or produced by the Respondent;
- (b) the lay witness affidavits served by the Respondent and their annexures or exhibits; and
- (c) the expert report served by the Respondent and its attachments.

If the Applicants or Bannister Law elect to destroy, rather than return, the documents described in clause 9(a) to (c) or any of them, Bannister Law must write to the Respondent's solicitors upon the expiry of the time period allowed by this clause and certify that all documents, apart from any that have been returned, have been destroyed in compliance with this clause.

10. NO FURTHER STEP IN THE PROCEEDING

No further step is to be taken in the Proceeding by the Parties other than steps that are:

- (a) provided for in this deed or reasonably necessary in order to implement or give effect to this deed, the Settlement Scheme or the Approval Order;
- (b) required by the Act, the Federal Court Rules, other relevant legislation or an order of the Court; or
- (c) agreed between the Parties.

11. NO ORDER AS TO COSTS

Except as otherwise provided by this deed, no Party shall seek orders for its costs of the Proceeding or the costs of or incidental to the application for Court approval of the settlement.

Except as otherwise provided by this deed, each Party bound by this deed agrees to bear its own costs in relation to the negotiation, preparation and execution of this deed and the performance of any obligations under this deed.

12. BINDING EFFECT OF THIS DEED

This deed binds:

- (a) the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any Party; and
- (b) each Group Member and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of such Group Member.

13. EXECUTION OF DOCUMENTS

Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts as reasonably required of it or them by notice from another Party to carry out and give full effect to this deed and the rights and obligations of the Parties under it.

14. NOTICES

14.1 How and where Notices may be sent

A Notice must be in writing and delivered electronically via email or by hand or sent by pre-paid post to a Party at the email address, address for that Party set out in Schedule 4 or as otherwise specified by a Party by Notice.

14.2 When Notices are taken to have been given and received

A Notice sent electronically via email is regarded as given and received on the date recorded on the email.

A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.

A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

15. ENTIRE AGREEMENT AND LEGAL EFFECT

This deed constitutes the entire agreement of the Parties in relation to the matters the subject of this deed.

16. GENERAL

16.1 Governing law and jurisdiction

This deed is governed by the law in force in New South Wales.

Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.

16.2 Variation

A variation of any term of this deed must be in writing and signed by the Parties.

16.3 Counterparts

This deed may be executed in any number of counterparts. In that event, the counterparts will be taken to constitute one instrument and this deed will take effect upon exchange of the duly executed counterparts.

16.4 Continuing obligations – no merger

Each obligation in this deed which is capable of having future operation continues in force even if other obligations in this deed have been performed.

16.5 Further assurances

Each Party must do all that is necessary or desirable to give full effect to the provisions of this deed. Without limitation, each Party will do so promptly at and in accordance with the request of any other Party.

17. DEFINITIONS AND INTERPRETATION

17.1 Agreement components

This agreement includes any schedule.

17.2 Definitions

In this deed:

“the Act” means *Federal Court of Australia Act 1976* (Cth).

“Approval Order” means orders substantially in the form of Schedule 3 to this deed approving the settlement of the Proceeding on the terms set out in this deed with such variations thereto as are agreed by each Party before the making of such order.

“Business Day” means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday in that city.

“Court” means the Federal Court of Australia.

“First Orders” means orders substantially in the form of Schedule 2 to this deed with such variations thereto as are agreed by each Party before the making of such order.

“Group Members” means as defined in paragraph 2 of the Third Further Amended Statement of Claim.

“Notice” means a notice or other communication under this deed.

“Party” means a party to this deed and in respect of the Applicants, both in their own capacity and in their capacity as representatives of Group Members pursuant to Part IVA of the Act and for and on behalf of the Group Members.

“Proceeding” means Federal Court of Australia Proceeding No. NSD 273 of 2016.

“Third Further Amended Statement of Claim” means the Third Further Amended Statement of Claim filed by the Applicants on 17 July 2017.

17.3 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed and a reference to this deed includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party’s successors and permitted assignees.
- (j) A promise on the part of 2 or more persons binds them jointly and severally.
- (k) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.

17.4 Interpretation of inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.

17.5 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

THIS DEED has been executed and delivered on the date stated at the beginning of this deed.

SCHEDULE 1

SETTLEMENT SCHEME

Definitions

Unless otherwise stated, words defined in the Deed have the same meaning in the Settlement Scheme.

“24-Pack”	A packet of the NSPR containing 24 caplets.
“24-Pack Price”	\$5.70.
“12-Pack”	A packet of the NSPR containing 12 caplets.
“12-Pack Price”	\$3.16.
“Accepted Group Member”	A Registered Group Member who is not a Challenged Group Member.
“Additional Documentation”	A statutory declaration which sets out or attaches the information or documentation requested by the Respondent, which relates to whether the Challenged Group Member in fact made the purchases claimed in their Prescribed Statutory Declaration.
“Administrator”	Sapere Research Group or, if Sapere Research Group is unwilling or unable to act as the Administrator, another accounting firm or a similarly qualified firm of the Respondent’s choosing.
“Administrator Determination”	The determination made in accordance with paragraph 13.
“Applicants’ Costs and Disbursements”	The reasonable costs and disbursements incurred by the Applicants: (a) in the Proceeding as at 28 July 2017; and (b) in obtaining the Approval Order.
“ATE Insurance Premium”	\$515,419.
“Challenged Group Member”	A Registered Group Member: (a) who submits a Prescribed Statutory Declaration estimating that he or she spent more than \$200 on the NSPR during the Relevant Period; and (b) whose claim the Respondent elects to challenge in accordance with paragraph 7.
“Determined Purchase Number”	The number of 24-Packs and 12-Packs: (a) claimed by an Accepted Group Member; (b) accepted by a Challenged Group Member under paragraph 11; or (c) determined by the Administrator under paragraph 13, used to calculate the Challenged Group Member’s Individual Payment.
“Funding Agreement”	An agreement entered into by Second Floor and any Group Member under which Second Floor agreed to provide financial assistance to that Group

	Member for the purpose of prosecuting the Proceeding.
“Individual Payment”	The amount to be paid from the Settlement Distribution Fund to each Registered Group Member based on their respective Determined Purchase Number and calculated in accordance with the Individual Payment Formula or the Pro-rata Price Formula (whichever is applicable).
“Individual Payment Formula”	The formula at paragraph 21.
“Individual Payment Schedule”	An electronic schedule which sets out the calculations used to determine the proposed Individual Payment for each Registered Group Member.
“Individual Payments Total”	The sum total of the Individual Payments for all Registered Group Members.
“Information Sheet”	<p>A one page document which sets out:</p> <ul style="list-style-type: none"> (a) the steps required for a Group Member to swear or affirm the Prescribed Statutory Declaration; (b) the legal obligations and commitments undertaken by the Group Member by swearing or affirming the Prescribed Statutory Declaration; and (c) how the Prescribed Statutory Declaration is to be submitted to the Administrator.
“NSPR”	The Nurofen Specific Pain Range, consisting of Nurofen Migraine Pain, Nurofen Tension Headache, Nurofen Period Pain and Nurofen Back Pain.
“Party”	Any of the Respondent, the Respondent’s solicitors, or the Applicants’ solicitors.
“Parties”	The Respondent, the Respondent’s solicitors and the Applicants’ solicitors.
“Prescribed Statutory Declaration”	<p>A statutory declaration which sets out:</p> <ul style="list-style-type: none"> (1) the type of NSPR product or products that the relevant Group Member purchased during the Relevant Period (i.e. migraine pain, period pain, tension headache or back pain); (2) the number of 12-Packs that the relevant Group Member purchased during the Relevant Period; (3) the number of 24-Packs that the relevant Group Member purchased during the Relevant Period; (4) the estimated amount spent by the relevant Group Member on NSPR products during the Relevant Period; (5) to the best of the relevant Group Member’s knowledge, when and how often they purchased the 12-Packs and/or 24-Packs during the Relevant Period; (6) to the best of the relevant Group Member’s knowledge, the name and location of the stores at which they purchased the 12-Packs and 24-Packs during the Relevant Period; (7) to the best of the relevant Group Member’s knowledge, the payment method they used to complete their purchases of the NSPR products during the Relevant Period; and (8) the relevant Group Member’s postal address, email address and phone number.

In the case that the relevant Group Member estimates that he or she spent more than \$200 on the NSPR during the Relevant Period, their statutory declaration must also attach, if available:

- (a) receipts evidencing that the relevant Challenged Group Member purchased the NSPR products during the Relevant Period;
- (b) photos of any NSPR products purchased by the relevant Challenged Group Member during the Relevant Period; and
- (c) copies of bank or credit card statements evidencing that the relevant Challenged Group Member made purchases of the NSPR products during the Relevant Period.

“Pro-rata 24-Pack Price”	The price calculated in accordance with the Pro-rata Price Formula.
“Pro-rata 12-Pack Price”	The price calculated in accordance with the Pro-rata Price Formula.
“Pro-rata Price Formula”	The formula at paragraph 22.
“Registration Close Date”	The day 4 months following the Court making the Approval Order.
“Registered Group Member”	A Group Member who submits a Prescribed Statutory Declaration by the Registration Close Date.
“Relevant Period”	1 January 2011 to 31 December 2015.
“Revised Purchase Number”	The number of 24-Packs and 12-Packs determined by the Respondent under paragraph 9.
“Second Floor Payment”	The payment to be made to Second Floor, calculated in accordance with paragraph 25.
“Settlement Distribution Fund”	The amount of the Settlement Sum, including any accrued interest, that remains after deducting the amounts from paragraphs 19 and 20(a).
“Settlement Sum”	The sum of \$3,500,000 to be paid by the Respondent to the Administrator in accordance with paragraph 3.
“Terms of Engagement”	<p>The terms and conditions to be signed by the Administrator which is to include:</p> <ul style="list-style-type: none"> (a) the fees and costs to be charged by the Administrator; and (b) confirmation that the Administrator will administer and apply the Settlement Scheme in accordance with the terms of the Settlement Scheme.

Settlement Scheme Administrator

1. The Settlement Scheme shall be administered and applied by the Administrator.
2. The Terms of Engagement must be agreed between the Parties prior to execution by the Administrator. Failing agreement between the Parties within 21 days of the Approval Order, the Respondent acting reasonably may determine the Terms of Engagement.
3. Within 28 days of the making of the Approval Order, the Respondent will pay the Settlement Sum into an interest-bearing trust account opened by the Administrator. The Administrator will hold the

Settlement Sum on trust and administer the Settlement Sum in accordance with the terms of the Settlement Scheme.

Proof of Claim Process

4. Each Group Member who wishes to participate in the Settlement Scheme must submit to the Administrator by the Registration Close Date a Prescribed Statutory Declaration.
5. Bannister Law will cause the form of the Prescribed Statutory Declaration and Information Sheet to be available electronically on the website <http://nurofenclassaction.com.au/> or in hard copy from Bannister Law by request.
6. The Administrator will provide the Parties with a copy of each Prescribed Statutory Declaration submitted by Group Members as soon as reasonably practicable after receipt.

Challenging Claims Process

7. The Respondent may give notice at any time in writing to the Administrator which sets out:
 - (a) a list of Challenged Group Members;
 - (b) any Additional Documentation that the Respondent requests in relation to any Challenged Group Member in order to verify their purchases set out in their Prescribed Statutory Declarations; and/or
 - (c) any Challenged Group Members that the Respondent wishes to question in the presence of the Administrator and the other Parties for the sole purpose of testing whether those Challenged Group Members in fact made the purchases claimed in their Prescribed Statutory Declaration.
8. Within 7 days of receipt of the notice in paragraph 7, the Administrator (as applicable):
 - (a) will use its best endeavours to procure from each Challenged Group Member the Additional Documentation and provide copies of those Additional Documentation to the Parties as soon as reasonably practicable after receipt;
 - (b) to the extent a Challenged Group Member is unable to produce the Additional Documentation, the Administrator will notify the Parties that the Additional Documentation cannot be produced by the relevant Challenged Group Member;
 - (c) must consider the Respondent's notice given under paragraph 7(c) and, acting reasonably and taking into account all matters the Administrator considers relevant including (i) the amount claimed by the relevant Challenged Group Member, (ii) the detail provided by the relevant Challenged Group Member in respect of their claim and (iii) the cost of allowing the Respondent's request, will decide, in their absolute discretion, whether to arrange the questioning of Challenged Group Members pursuant to the Respondent's notice given under paragraph 7(c).
9. As soon as reasonably practicable following receipt of any Additional Documentation, and subject to the Respondent's exercise of its rights under paragraph 7(c), the Respondent may notify the Administrator of a Revised Purchase Number for the relevant Challenged Group Member.

10. The Administrator will notify any Challenged Group Member of a Revised Purchase Number for that Challenged Group Member and invite the relevant Challenged Group Member to respond to the Administrator and accept or reject the Revised Purchase Number within a period of 7 days.
11. If the relevant Challenged Group Member accepts the Revised Purchase Number, this becomes the Determined Purchase Number for the purpose of calculating that Challenged Group Member's Individual Payment. The Administrator will notify the Parties as soon as reasonably practicable following acceptance by the relevant Challenged Group Member of the Revised Purchase Number.
12. In respect of each Challenged Group Member, if:
 - (a) the Respondent:
 - (i) in its reasonable opinion, does not receive adequate Additional Documentation under paragraph 8 and decides not to determine a Revised Purchase Number; or
 - (ii) after receipt of the Additional Documentation, still has reasonable doubts as to the accuracy of that Challenged Group Member's claim as set out in the Prescribed Statutory Declaration,

and does not subsequently exercise its rights under paragraph 7(c); or
 - (b) the Challenged Group Member refuses to be questioned by the Respondent pursuant to the exercise of the Respondent's rights under paragraph 7(c) or the Administrator determines not to allow for questioning of a Challenged Group member under paragraph 8(c); or
 - (c) following the Respondent's questioning of the Challenged Group Member pursuant to the exercise of the Respondent's rights under paragraph 7(c), the Respondent has reasonable doubts as to the accuracy of that Challenged Group Member's claim as set out in their Prescribed Statutory Declaration; or
 - (d) the Challenged Group Member does not accept the Revised Purchase Number,then the Respondent may notify the Administrator in writing that it requires an Administrator Determination in respect of that Challenged Group Member's claim.
13. Where notice is given under paragraph 12, the Administrator must, acting reasonably, make a determination of the Determined Purchase Number for that Challenged Group Member within a period of 7 days.
14. The Determined Purchase Number for each Registered Group Member is final and binding on the Registered Group Member and the Parties and, subject to paragraph 18, the Registered Group Member and the Parties waive each of their rights to seek to review, quash or call into question the Determined Purchase Number before any court of law or administrative review body in any proceedings.
15. The Determined Purchase Number for each Registered Group Member must be used to calculate their Individual Payment and is to be included in the Individual Payment Schedule.

Audit of Administrator's administration of the Settlement Scheme

16. Any Party shall have the right to access and inspect the books and records maintained by the Administrator in connection with the Settlement Scheme, including copies of all Additional Documentation submitted by Challenged Group Members.

17. Any Party shall have the right to audit (on an on-going basis and prior to the distribution of Individual Payments to Registered Group Members) the Administrator's administration of the Settlement Scheme and the Administrator shall provide that Party such information about the administration of the Settlement Scheme as that Party reasonably requests.
18. If any Party identifies any errors in the administration of the Settlement Scheme, then they will notify the Administrator and the other Parties in writing and if, the Administrator, acting reasonably, agrees that the errors notified are, in fact, errors then the Administrator must promptly remedy those errors including, if necessary, by revising any Registered Group Member's Individual Payment or the Individual Payment Schedule.

Payment of Individual Payments and the Second Floor Payment

19. 7 days after the Respondent pays the Settlement Sum under paragraph 3 above, Administrator may, from time to time, pay any of its reasonable costs and disbursements it incurs in connection with the administration of the Settlement Scheme from the Settlement Sum.
20. Within 14 days after the later of the Registration Close Date, determination of the Determined Purchase Number for all Registered Group Members or the completion of any audit by any Party of the administration of the Settlement Scheme under paragraphs 16 to 18, the Administrator must:
 - (a) pay any of its reasonable costs and disbursements it has incurred but which have not yet been paid (and any of its future costs and disbursements to be reasonably incurred) in connection with the administration of the Settlement Scheme from the Settlement Sum;
 - (b) determine the total amount of the Settlement Distribution Fund;
 - (c) determine each Registered Group Member's Individual Payment, in accordance with paragraph 21 or paragraph 22 (whichever is applicable);
 - (d) provide the Parties with the Individual Payment Schedule.
21. If the Individual Payments Total plus the Second Floor Payment is less than or equal to the Settlement Distribution Fund, each Registered Group Member's Individual Payment is to be determined using the following formula:

$$\text{Individual Payment} = 80\% \times \left[\frac{\text{(No. of 24-Packs in the Determined Purchase Number for the Registered Group Member X)}}{24\text{-Pack Price}} + \frac{\text{(No. of 12-Packs in the Determined Purchase Number for the Registered Group Member X)}}{12\text{-Pack Price}} \right]$$

22. If the Individual Payments Total plus the Second Floor Payment is (prior to the application of this paragraph) greater than the Settlement Distribution Fund, the Settlement Distribution Fund will represent the entirety of Respondent's liability to Registered Group Members. Each Registered Group Member's Individual Payment is to be determined using the following formula:

$$\text{Individual Payment} = 80\% \times \left[\frac{\text{(No. of 24-Packs in the Determined Purchase Number for the Registered Group Member X)}}{\text{Pro-rata 24-Pack Price}} + \frac{\text{(No. of 12-Packs in the Determined Purchase Number for the Registered Group Member X)}}{\text{Pro-rata 12-Pack Price}} \right]$$

Where:

$$\begin{array}{rcl} \text{Pro-rata 24-Pack Price} & = & \frac{\text{Settlement Distribution Fund}}{[(T24Packs) + (0.554385965 \times T12Packs)]} \\ \\ \text{Pro-rata 12-Pack Price} & = & \frac{\text{Pro-rata 24-Pack Price}}{1.803797468} \end{array}$$

And:

- T24Packs = the total number of 24-Packs calculated by adding together the 24-Pack component of the Determined Purchase Number for all Registered Group Members.
 - T12Packs = the total number of 12-Packs calculated by adding together the 12-Pack component of the Determined Purchase Number for all Registered Group Members.
23. Within 14 days of receipt of the Individual Payment Schedule, the Respondent must notify the Administrator:
- (a) of any objections it has to the Individual Payments, the calculations contained in the Individual Payment Schedule, or the distribution of the Individual Payments to particular Registered Group Members; or
 - (b) confirm that it has no objections to the distribution of the Individual Payments to Registered Group Members in accordance with the Individual Payment Schedule.
24. Upon notification of an objection or objections under paragraph 23(a), the Administrator must, acting reasonably, make a determination of that objection or those objections and, if appropriate, provide the Parties with a revised Individual Payment Schedule.
25. Upon the final resolution of objections under paragraph 24 or the confirmation under paragraph 23(b), the Administrator must:
- (a) determine the Individual Payments Total;
 - (b) determine the Second Floor Payment using the following formula:

$$\begin{array}{rcl} \text{Second Floor Payment} & = & \frac{\text{Individual Payments Total}}{4} \end{array}$$

4

26. Within 14 days of the final resolution of objections under paragraph 24 or the confirmation under paragraph 23(b), the Administrator will:
- (a) distribute the Individual Payment to each Registered Group Member in accordance with their nominated means of receiving payment; and
 - (b) pay the Second Floor Payment to Second Floor.

27. In the event any Individual Payment cannot be made to a Registered Group Member by electronic funds transfer, that Registered Group Member may request to receive their Individual Payment by way of a cheque from the Administrator. The Administrator must arrange for a cheque (in the amount of that Registered Group Member's Individual Payment less the cost of issuing the cheque and postage) to be sent to that Registered Group Member.
28. If the Administrator is unable to effectively make the Individual Payment to a Registered Group Member in accordance with paragraphs 26 or 27, it must make all reasonable inquiries and take all reasonable steps to ensure that the Individual Payment is paid to the Registered Group Member.
29. Each Group Member agrees that following the proper administration of this Settlement Scheme, the allocation of Individual Payments from the Settlement Distribution Fund is final and waive each of their rights to seek to review, quash or call into question the allocation of Individual Payments before any court of law or administrative review body in any proceedings.

Releases from Second Floor

30. Upon payment of the Second Floor Payment in accordance with paragraph 26(b):
 - (a) Second Floor permanently waives any power, right or remedy granted to it under the Funding Agreements; and
 - (b) otherwise releases and discharges the Applicants and Group Members from any claim, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunction, specific performance or any other remedy in respect of any Funding Agreement or the performance of Second Floor's obligations under any Funding Agreement.

Repayment to the Respondent of any Surplus

31. Within 14 days after determining the Individual Payments Total and the Second Floor Payment, in accordance with paragraph 25, the Administrator must transfer to the Respondent any proportion of the Settlement Distribution Fund that will not be distributed to Registered Group Members or paid to Second Floor in accordance with the Settlement Scheme, including any interest earned on the Settlement Distribution Fund.
32. If, after 90 days after the date in paragraph 26, the Administrator is unable to make payment of a Registered Group Member's Individual Payment in accordance with paragraphs 26 to 28, then those Individual Payments are to be remitted to the Respondent.

Advertising of the Settlement

33. Except for as required under the Approval Order, the form content, medium and distribution of any proposed advertisement of the Settlement must be approved in writing by the Respondent, with such approval not to be unreasonably withheld. However, the Parties are at liberty to advise and inform Group Members or potential Group Members of the terms of the settlement and the method of making a claim consistent with the content of the long-form notice and short-form notice approved under the Approval Order (save that the costs of any advertising, advising or informing undertaken by a Party in addition to that required by the First Orders and Approval Order shall be borne by that party alone and shall not be paid from the Settlement Sum and shall not be costs for which the Respondent is liable).

Costs

34. Within 28 days of the Approval Order, the Respondent will pay to the Applicants:

- (a) the Applicants' Costs and Disbursements on a solicitor-client basis, as agreed or assessed; and
- (b) the ATE Insurance Premium.

Miscellaneous

- 35. Unless agreement can be reached by the Parties, at any time the Administrator may approach the Court, after giving at least 7 days' notice to the Parties, to seek an extension of time from the Court to complete any of the steps provided for in the Settlement Scheme.
- 36. Where the Administrator considers that it is appropriate for the Court to give directions concerning the implementation or administration of this Settlement Scheme, the Administrator may approach the Court for directions, having notified the Parties of its intention to do so.
- 37. The webpage <http://nurofenclassaction.com.au/> is only to comprise the Deed of Settlement, the Settlement Scheme, the Prescribed Statutory Declaration and orders made by the Court or other notices approved by either the Respondent or the Court in this Proceeding.

SCHEDULE 2
FIRST ORDERS

No. NSD 273 of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General

Keith George Hardy and another named in the Schedule
Applicant

Reckitt Benckiser (Australia) Pty Ltd (ACN 003 274 655)
Respondent

Before: Justice Nicholas
Date of order: [•] 2017
Where made: Sydney

THE COURT NOTES THAT:

- A. The Applicants and the Respondent have agreed to settle the claims made in the Proceeding on the terms set out in the Settlement Deed, a copy of which is Annexure A to these orders (the **Deed of Settlement**).

THE COURT ORDERS BY CONSENT THAT:

1. The solicitors for the Applicants (**Bannister Law**) will cause a notice in the form of Annexure B to these Orders (the **Long-form Notice**) to be sent by email or by pre-paid post to the last known address of each person who has retained Bannister Law in the Proceeding by no later than *[insert date 10 business days after the First Orders are made]*.
2. By *[insert date 5 business days after the First Orders are made]*, Bannister Law:
 - (a) shall cause to be published, on three occasions, a quarter-page size weekday edition of each of the following newspapers:
 - (i) The Advertiser;
 - (ii) Hobart Mercury;
 - (iii) The Daily Telegraph;
 - (iv) The Courier Mail;

- (v) Herald Sun;
- (vi) Centralian Advocate;
- (vii) The West Australian; and
- (viii) The Canberra Times,

a notice in the form set out in Annexure C (**Short-form Notice**); and

- (b) shall cause the Long-form Notice to be posted on the website (<http://nurofenclassaction.com.au>).

3. An order pursuant to sections 33X and 33Y of the Act that the form and content of the Long-form Notice and Short-form Notice is approved.
4. The costs of complying with orders 1 and 2 be paid by the Applicants.
5. Any Group Member (as defined in the Third Further Amended Statement of Claim filed 17 July 2017) who wishes to object to the Court's approval of the Deed of Settlement or otherwise to the disposal of the Proceeding must do so by filing a notice with Registry in the form of the Schedule to the Long-form Notice by *[insert date 10 business days before the approval hearing]*.
6. Save for any Group Member who has filed a notice in accordance with order 5, no other Group Member is entitled to object to the Court's approval of the Deed of Settlement or otherwise to the disposal of the Proceeding.
7. Bannister Law and the Respondent's solicitors have leave to inspect the court file and to copy any notices of objection filed by Group Member objecting to the settlement.
8. The hearing of the application to approve the Deed of Settlement be adjourned to *[insert date 20 business days after the date of the First Orders]*.
9. Costs of the application and the day be reserved.

Schedule

No. NSD273 of 2016

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant

YASMINKA JANG

ANNEXURE A
DEED OF SETTLEMENT

ANNEXURE B

LONG-FORM NOTICE

FEDERAL COURT OF AUSTRALIA NUROFEN SPECIFIC PAIN RANGE CLASS ACTION – PROPOSED SETTLEMENT

1. Why is this notice important?

On 24 February 2016, a representative proceeding or “class action” was commenced in the Federal Court of Australia against Reckitt Benckiser (Australia) Pty Ltd (**Respondent**). The class action is brought by Keith Hardy and Yasminka Jang (**Applicants**) on their own behalf and on behalf of all group members (defined below). The class action arises out of the packaging of, and certain webpages in relation to, the following pain relief products which were marketed, sold and supplied in Australia by the Respondent in the period 1 January 2011 to 31 December 2015 (**Relevant Period**):

- **Nurofen Migraine Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Tension Headache** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Period Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Back Pain** ibuprofen lysine 342 mg tablet blister pack,

(together, “**Nurofen Specific Pain Range**”).

The Federal Court has ordered that this notice be published for the information of persons who might have claims affected by the class action. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

2. What is a class action?

A class action is an action that is brought by one or more persons, the Applicants, on their own behalf and on behalf of a group of people, “**group members**”, against another person, the Respondent, where the Applicants and the group members have similar claims against the Respondent.

Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.

3. What is this class action?

This class action is brought by the Applicants on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

The Applicants allege in the statement of claim in Federal Court proceeding *Keith George Hardy & Anor v Reckitt Benckiser (Australia) Pty Ltd*, NSD 273 of 2016, that in the Relevant Period, certain packaging and website representations made by the Respondent were misleading or deceptive, and in breach of various provisions of the Australian Consumer Law. Those representations included: (1) that each product in the Nurofen Specific Pain Range was specifically formulated to treat the particular type of pain specified on the packaging; and (2) that each product solely or specifically treated the particular type of pain specified on the packaging.

Remedies being sought by the Applicants include damages or compensation.

The Respondent admits that certain packaging and website representations made in the Relevant Period were misleading or deceptive but does not admit or otherwise denies the other claims made in the statement of claim, denies that it is liable to the Applicants as alleged or at all, and is defending the class action.

4. Are you a group member?

You are a group member if you are a consumer who purchased one or more of the Nurofen Specific Pain Range products in Australia in the Relevant Period.

If you are unsure whether or not you are a group member, you should contact Bannister Law on 1300 763 950 or email nurofen@bannisterlaw.com.au or seek your own legal advice without delay.

5. Proposed settlement of the class action

The Applicants have reached an agreement with the Respondent to settle the class action on the basis that the Respondent pay a sum of \$3,500,000 into a settlement fund and the class action be dismissed. The settlement requires the approval of the Federal Court before it takes effect.

If the settlement is approved by the Federal Court, it will be legally binding on all group members in the Proceeding. In that event, a settlement scheme to distribute the money paid by the Respondent will be administered by Sapere Research Group (**Administrator**).

Under the scheme:

- (a) following approval of the settlement by the Federal Court, group members must swear or affirm and submit to the Administrator a prescribed statutory declaration in relation to their purchases of Nurofen Specific Pain Range products in the Relevant Period;
- (b) before any payment is made to a group member, the Respondent will have the right to request additional information from group members who claim to have purchased more than \$200 of Nurofen Specific Pain Range products, including by requesting additional documents or requesting (with the Administrator's approval) that group member to answer questions in person before the Administrator;
- (c) the amount available for distribution to group members will be \$3,500,000, less the Administrator's administrative costs of administering the settlement fund (**Settlement Distribution Fund**);
- (d) subject to paragraph (e) below, participating group members will be entitled to receive a payment of \$5.70 for each 24-tablet sized pack and \$3.16 for each 12-tablet sized pack purchased in the Relevant Period, less 20% which represents a payment to Second Floor Litigation Services Pty Ltd (**Second Floor**) in consideration for their funding of the legal costs of the class action;
- (e) if the total claims of participating group members (inclusive of the payment to Second Floor) exceed the Settlement Distribution Fund, then the amount payable to participating group members for each 12- and 24-tablet sized pack of Nurofen Specific Pain Range product purchased in the Relevant Period will be reduced on a pro rata basis; and
- (f) any portion of the Settlement Distribution Fund remaining after payments to participating group members are determined will be remitted to the Respondent.

The full terms of the settlement, including the settlement scheme, can be reviewed on the Federal Court website ([www.fedcourt.gov.au/\[•\].html](http://www.fedcourt.gov.au/[•].html)), or on Bannister Law's website (<http://nurofenclassaction.com.au/>).

6. Court approval

The Applicants will seek the Court's approval of the settlement, including the total settlement sum, the payment to Second Floor, a payment to Bannister Law, the Applicants' solicitors, for their reasonable costs and disbursements, the distribution of the Settlement Distribution Fund among group members, and each aspect of the proposed settlement

scheme, at a hearing at the Federal Court in Sydney on [●] 2017. If the Court approves the settlement, then the settlement will be legally binding on every group member.

7. What you must do

If you are a group member and you are in favour of the settlement, then there is nothing you need do at this time. If the settlement is approved and you are a group member, you may submit a proof of claim at that stage. A further notice will be published in newspapers and on Bannister Law's website after [insert date of Approval hearing] and before [insert date], and it will tell you what you need to do then. If the settlement is not approved, the class action will continue in the Federal Court.

If you are a group member and you wish to object to the settlement or the settlement scheme, then you must send a written notice to the Federal Court. You should use the form set out in the Schedule below. It must have the heading shown. It must be received by the Court before [insert date 10 days before Approval hearing]. If you send a notice objecting to the settlement you may appear in person, or engage a lawyer, to explain your objection to the Federal Court on [insert date of Approval hearing].

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Bannister Law on 1300 763 950 or email nurofenclassaction@bannisterlaw.com.au or seek your own legal advice. You should not delay in making your decision.

If any group member wishes to engage separate solicitors then that person will need to make a separate costs agreement with those solicitors.

SCHEDULE

Notice in relation to Proposed Settlement of the Proceeding

(Filed in the New South Wales District Registry)

Keith Hardy v Reckitt Benckiser (Australia) Pty Ltd

No. 273 of 2016

To: The Registrar
Federal Court of Australia (New South Wales District Registry)
Level 16, Law Courts Building
Queens Square
Sydney NSW 2000

I, _____,

a group member in the above proceeding, give notice that I object to the proposed settlement of the representative proceeding on the terms proposed because [SET OUT IN THE SPACE BELOW THE REASONS WHY YOU OBJECT TO THE PROPOSED SETTLEMENT]:

Signed: _____

Name: _____

Address: _____

Phone number: _____

Email address
(if available): _____

Date: _____

ANNEXURE B

SHORT-FORM NOTICE

NUROFEN SPECIFIC PAIN RANGE CLASS ACTION – PROPOSED SETTLEMENT

On 24 February 2016, a representative proceeding or “class action” was commenced in the Federal Court of Australia against Reckitt Benckiser (Australia) Pty Ltd (**Respondent**). The class action is brought by Keith Hardy and Yasminka Jang (**Applicants**) on their own behalf and on behalf of all group members (defined below). The class action arises out of the packaging of, and certain webpages in relation to, the following pain relief products which were marketed, sold, and supplied in Australia by the Respondent in the period 1 January 2011 to 31 December 2015:

- **Nurofen Migraine Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Tension Headache** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Period Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Back Pain** ibuprofen lysine 342 mg tablet blister pack, (together, “Nurofen Specific Pain Range”).

The Federal Court has ordered that this notice, and a longer-form notice available at <http://nurofenclassaction.com.au/>, be published for the information of persons who might have claims affected by the class action. **You should read this and the longer-form notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

The class action has been commenced by the Applicants on their own behalf and on behalf of all persons who are group members. You are a group member if you are a consumer who purchased one or more of the Nurofen Specific Pain Range products in Australia in the period 1 January 2011 to 31 December 2015.

Remedies being sought by the Applicants include damages or compensation for alleged contraventions of various provisions of the Australian Consumer Law.

The Respondent admits that certain packaging and website representations made in the period 1 January 2011 to 31 December 2015 (as set out in the statement of claim) were misleading or deceptive but does not admit or otherwise denies the other claims made in the statement of claim, denies that it is liable to the Applicants as alleged or at all, and is defending the class action.

Proposed settlement of the class action

The Applicants have reached an agreement with the Respondent to settle the class action on the basis that the Respondent pay \$3,500,000 into a settlement fund and the class action be dismissed. The settlement requires the approval of the Federal Court before it takes effect.

If the settlement is approved by the Federal Court, it will be legally binding on all group members in the Proceeding. In that event, a settlement scheme to distribute the money paid by the Respondent will be administered by Sapere Research Group (**Administrator**).

The full terms of the settlement, including the settlement scheme, can be reviewed on the Federal Court website www.fedcourt.gov.au [\[x\].html](#)), or on Bannister Law’s website (<http://nurofenclassaction.com.au/>).

The Applicants will seek the Court’s approval of the settlement, including the total settlement sum, a payment to Second Floor Litigation Services Pty Ltd (in consideration for funding the legal costs of the class action), a payment to Bannister Law, the Applicants’ solicitors, in respect of their costs and disbursements, the distribution of the settlement distribution fund among group members, and each aspect of the proposed settlement scheme, at a hearing at the Federal Court in Sydney on [\[insert date\]](#) 2017. If the Court approves the settlement, then the settlement will be binding on every group member.

If you are a group member and you are in favour of the settlement, then there is nothing you need to do at this time. If the settlement is approved and you are a group member, you may submit a proof of claim at that stage. A further notice will be published in this section of this newspaper and on Bannister Law’s website after [\[insert date of Approval hearing\]](#) and before [\[insert date\]](#), and it will tell you what you need to do then. If the settlement is not approved, the class action will continue in the Federal Court.

If you are a group member and you wish to object to the settlement or the settlement scheme, then you must send a written notice to the Federal Court. You should use the form set out in the Schedule to the longer-form notice available at <http://nurofenclassaction.com.au/>. It must have the heading shown. It must be received by the Court before [\[insert date 10 days before Approval hearing\]](#). If you send a notice objecting to the settlement you may appear in person, or engage a lawyer, to explain your objection to the Federal Court on [\[insert date of Approval hearing\]](#).

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Bannister Law on 1300 763 950 or email nurofenclassaction@bannisterlaw.com.au or seek your own legal advice. You should not delay in making your decision.

If any group member wishes to engage separate solicitors then that person will need to make a separate costs agreement with those solicitors.

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SCHEDULE 3
APPROVAL ORDER

No. NSD 273 of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General

Keith George Hardy and another named in the Schedule
Applicant

Reckitt Benckiser (Australia) Pty Ltd (ACN 003 274 655)
Respondent

Before: Justice Nicholas
Date of order: [•] 2017
Where made: Sydney

THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to section 33V of the of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the Court hereby approves the settlement of this Proceeding in accordance with the terms of the Deed of Settlement, a copy of which is Annexure A to these Orders (the **Deed of Settlement**).
2. The solicitors for the Applicants (**Bannister Law**) will cause a notice in the form of Annexure B to these Orders (the **Long-form Notice**) to be sent by email or by pre-paid post to the last known address of each person who has retained Bannister Law in the Proceeding by no later than *[insert date 10 business days after the Approval Orders are made]*.
3. By *[insert date 5 business days after the Approval Orders are made]*, Bannister Law:
 - (a) shall cause to be published, on three occasions, a quarter-page size weekday edition of each of the following newspapers:
 - (i) The Advertiser;
 - (ii) Hobart Mercury;
 - (iii) The Daily Telegraph;
 - (iv) The Courier Mail;
 - (v) Herald Sun;
 - (vi) Centralian Advocate;

(vii) The West Australian; and

(viii) The Canberra Times,

a notice in the form set out in Annexure C (**Short-form Notice**); and

(b) shall cause the Long-form Notice to be posted on the website (<http://nurofenclassaction.com.au>).

4. An order pursuant to sections 33X and 33Y of the Act that the form and content of the Long-form Notice and Short-form Notice is approved.
5. The costs of complying with orders 1 and 2 be paid by the Applicants.
6. All costs orders made to date in the Proceeding are vacated.
7. Pursuant to section 33ZF of the Act or otherwise, the Court authorises the Applicants *nunc pro tunc* on behalf of the group members described in Order 8 to enter into and to give effect to the Deed of Settlement and the transactions thereby contemplated for and on behalf of those group members.
8. Pursuant to section 33ZB(a) of the Act or otherwise, the Court declares that the persons affected and bound by these orders are the Applicants, the Respondent, and the group members who are defined in the Third Further Amended Statement of Claim filed on 17 July 2017 as follows:

Consumers (within the meaning of section 3 of the *Australian Consumer Law*) who purchased any of the Nurofen Specific Pain Range products between 1 January 2011 and December 2015, comprising:

- Nurofen Migraine Pain ibuprofen lysine 343 mg tablet blister pack;
- Nurofen Tension Headache ibuprofen lysine 343 mg tablet blister pack;
- Nurofen Period Pain ibuprofen lysine 342 mg tablet blister pack;
- Nurofen Back Pain ibuprofen lysine 342 mg tablet blister pack,

in the form depicted in Annexures A, B, C and D to the Third Further Amended Statement of Claim.

9. Pursuant to sections 33V and 33ZF of the Act, liberty is granted to the Administrator (as defined in the Deed of Settlement) to apply to the Court in connection with the Settlement Scheme (as defined in the Deed of Settlement) including for any order, approval or guidance of the kind contemplated by the Settlement Scheme.
10. The Third Further Amended Originating Application filed on 17 July 2017 be dismissed.

Schedule

No. NSD273 of 2016

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Applicant

YASMINKA JANG

ANNEXURE A
DEED OF SETTLEMENT

ANNEXURE B

LONG-FORM NOTICE

FEDERAL COURT OF AUSTRALIA NUROFEN SPECIFIC PAIN RANGE CLASS ACTION – APPROVED SETTLEMENT

1. Why is this notice important?

On 24 February 2016, a representative proceeding or “class action” was commenced in the Federal Court of Australia against Reckitt Benckiser (Australia) Pty Ltd (**Respondent**). The class action is brought by Keith Hardy and Yasminka Jang (**Applicants**) on their own behalf and on behalf of all group members (defined below). The class action arises out of the packaging of, and certain webpages in relation to, the following pain relief products which were marketed, sold and supplied in Australia by the Respondent in the period 1 January 2011 to 31 December 2015 (**Relevant Period**):

- **Nurofen Migraine Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Tension Headache** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Period Pain** ibuprofen lysine 342 mg tablet blister pack;
- **Nurofen Back Pain** ibuprofen lysine 342 mg tablet blister pack,

(together, “**Nurofen Specific Pain Range**”).

The Federal Court has ordered that this notice be published for the information of persons who might have claims affected by the class action. **You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

2. What is a class action?

A class action is an action that is brought by one or more persons, the Applicants, on their own behalf and on behalf of a group of people, “**group members**”, against another person, the Respondent, where the Applicants and the group members have similar claims against the Respondent.

Group members in a class action are **not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.

3. What is this class action?

This class action is brought by the Applicants on their own behalf and on behalf of all persons who are group members as defined in the proceeding.

The Applicants allege in the statement of claim in Federal Court proceeding *Keith George Hardy & Anor v Reckitt Benckiser (Australia) Pty Ltd*, NSD 273 of 2016, that during the Relevant Period, certain packaging and website representations made by the Respondent were misleading or deceptive, and in breach of various provisions of the Australian Consumer Law. Those representations included: (1) that each product in the Nurofen Specific Pain Range was specifically formulated to treat the particular type of pain specified on the packaging; and (2) that each product solely or specifically treated the particular type of pain specified on the packaging.

Remedies being sought by the Applicants include damages or compensation.

The Respondent admits that certain packaging and website representations made in the Relevant Period were misleading or deceptive but does not admit or otherwise denies the other claims made in the statement of claim, denies that it is liable to the Applicants as alleged or at all, and is defending the class action.

4. Are you a group member?

You are a group member if you are a consumer who purchased one or more of the Nurofen Specific Pain Range products in Australia in the Relevant Period.

If you are unsure whether or not you are a group member, you should contact Bannister Law on 1300 763 950 or email nurofen@bannisterlaw.com.au or seek your own legal advice without delay.

5. Court approved settlement of the class action

On **[insert date]** the Federal Court of Australia approved the settlement of the Proceeding. Under the settlement, the Respondent is to pay a sum of \$3,500,000 into a settlement fund to be administered by Sapere Research Group (**Administrator**) and the Proceeding has been dismissed. The settlement is binding on all group members.

If you are a group member you are entitled to a distribution under the settlement for Nurofen Specific Pain Range products you purchased in the Relevant Period in accordance with the settlement scheme approved by the Court.

The amount available for distribution to group members will be \$3,500,000, less the Administrator's administrative costs of administering the settlement fund (**Settlement Distribution Fund**).

Participating group members will be entitled to receive a payment of \$5.70 for each 24-tablet sized pack and \$3.16 for each 12-tablet sized pack purchased in the Relevant Period, less 20% which represents a payment to Second Floor Litigation Services Pty Ltd (**Second Floor**) in consideration for their funding of the legal costs of the Proceeding. However, if the total claims of participating group members (inclusive of the payment to Second Floor) exceed the Settlement Distribution Fund, then the amount payable to participating group members for each 12- and 24-tablet sized pack of Nurofen Specific Pain Range product purchased in the Relevant Period will be reduced on a pro rata basis.

Before any payment is made to a group member, the Respondent will have the right to request additional information from group members who claim to have purchased more than \$200 of Nurofen Specific Pain Range products, including by requesting additional documents or requesting (with the Administrator's approval) that group member to answer questions in person before the Administrator.

6. How to make a claim

The settlement scheme is being administered by the Administrator. If you are a group member and wish to make a claim, you will need to complete the following steps:

- (a) go to the following website – <http://nurofenclassaction.com.au/>; and
- (b) download and complete the prescribed statutory declaration. You will need to sign the prescribed statutory declaration before an authorised witness, such as a lawyer or Justice of the Peace.

The prescribed statutory declaration must be returned to the Administrator by no later than **[insert date 4 months after the making of the Approval Order]** (**Closing Date**). If you do not submit your claim by the Closing Date you will not be entitled to participate in the settlement.

All claims will be processed following the Closing Date however, before any payment is made to a group member, the Respondent will also have the right to test certain group members who claim to have purchased more than a particular amount of Nurofen Specific Pain Range products, including by calling for supporting documents to be produced or asking the group member to answer questions under oath or affirmation at a hearing before the Administrator.

If you have submitted a valid claim, payment will be made as soon as reasonably practicable after the Closing Date.

If you have any questions, or if you cannot access the prescribed statutory declaration at the website above and would like a copy sent to you, please contact Bannister Law on 1300 763 950 or email nurofen@bannisterlaw.com.au, or seek your own legal advice.

ANNEXURE B

SHORT-FORM NOTICE

NUROFEN SPECIFIC PAIN RANGE CLASS ACTION – APPROVED SETTLEMENT

On 24 February 2016, a representative proceeding or “class action” was commenced in the Federal Court of Australia against Reckitt Benckiser (Australia) Pty Ltd (**Respondent**). The class action is brought by Keith Hardy and Yasminka Jang (**Applicants**) on their own behalf and on behalf of all group members (defined below). The class action arises out of the packaging of, and certain webpages in relation to, the following pain relief products which were marketed, sold, and supplied in Australia by the Respondent in the period 1 January 2011 to 31 December 2015:

- **Nurofen Migraine Pain** ibuprofen lysine 342 mg tablet blister pack;
 - **Nurofen Tension Headache** ibuprofen lysine 342 mg tablet blister pack;
 - **Nurofen Period Pain** ibuprofen lysine 342 mg tablet blister pack;
 - **Nurofen Back Pain** ibuprofen lysine 342 mg tablet blister pack.
- (together, “**Nurofen Specific Pain Range**”).

The Federal Court has ordered that this notice, and a longer-form notice available at <http://nurofenclassaction.com.au/>, be published for the information of persons who might have claims affected by the class action. **You should read this and the longer-form notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

The class action has been commenced by the Applicants on their own behalf and on behalf of all persons who are group members. You are a group member if you are a consumer who purchased one or more of the Nurofen Specific Pain Range products in Australia in the period 1 January 2011 to 31 December 2015.

Remedies being sought by the Applicants include damages or compensation for alleged contraventions of various provisions of the Australian Consumer Law.

The Respondent admits that certain packaging and website representations made in the period 1 January 2011 to 31 December 2015 (as set out in the statement of claim) were misleading or deceptive but does not admit or otherwise denies the other claims made in the statement of claim, denies that it is liable to the Applicants as alleged or at all, and is defending the class action.

Court approved settlement of the class action

On [insert date] the Federal Court of Australia approved the settlement of the Proceeding. Under the settlement, the Respondent is to pay a sum of \$3,500,000 into a settlement fund to be administered by Sapere Research Group (**Administrator**) and the Proceeding has been dismissed. The settlement is binding on all group members.

If you are a group member you are entitled to a distribution under the settlement for Nurofen Specific Pain Range products you purchased in the period 1 January 2011 to 31 December 2015, in accordance with the settlement scheme approved by the Court.

The amount available for distribution to group members will be \$3,500,000, less the Administrator’s administrative costs of administering the fund (**Settlement Distribution Fund**).

Participating group members will be entitled to receive a payment of \$5.70 for each 24-tablet sized pack and \$3.16 for each 12-tablet sized pack purchased in the period 1 January 2011 and 31 December 2015, less 20% which represents a payment to Second Floor Litigation Services Pty Ltd (**Second Floor**) in consideration for their funding of the legal costs of the class action. However, if the total claims of participating group members (inclusive of the payment to Second Floor) exceed the Settlement Distribution Fund, then the amount payable to participating group members for each 12- and 24-tablet size pack of Nurofen Specific Pain Range product purchased in the period 1 January 2011 to 31 December 2015 will be reduced on a pro rata basis.

How to make a claim

If you are a group member and wish to make a claim, you will need to complete the following steps:

- (a) go to the following website – <http://nurofenclassaction.com.au/>; and
- (b) download and complete the prescribed statutory declaration. You will need to sign the prescribed statutory declaration before an authorised witness, such as a Justice of the Peace.

The prescribed statutory declaration must be returned to the Administrator by no later than [insert date 4 months after the making of the **Approval Order**] (**Closing Date**). If you do not submit your claim by the Closing Date you will not be entitled to participate in the settlement.

All claims will be processed following the Closing Date however, before any payment is made to a group member, the Respondent will also have the right to request additional information from group members who claim to have purchased more than \$200 of Nurofen Specific Pain Range products, including by requesting additional documentation and/or requesting (with the Administrator’s approval) that group member to answer questions in person before the Administrator.

If you have submitted a valid claim, payment will be made as soon as reasonably practicable after the Closing Date.

If you have any questions, or if you cannot access the prescribed statutory declaration at the website above and would like a copy sent to you, please contact Bannister Law on 1300 763 950 or email nurofen@bannisterlaw.com.au, or seek your own legal advice.

M5x3

170mm x 150mm

SCHEDULE 4

NOTICE DETAILS

Keith George Hardy

Address	C-/ Bannister Law, Suite 1, Level 2, 155 Castlereagh Street, Sydney, New South Wales 2000
Attention	Mr Charles Bannister
Phone	02 8999 2888
Fax	02 8088 0731

Yasminka Jang

Address	C-/ Bannister Law, Suite 1, Level 2, 155 Castlereagh Street, Sydney, New South Wales 2000
Attention	Mr Charles Bannister
Phone	02 8999 2888
Fax	02 8088 0731

Bannister Law

Address	Suite 1, Level 2, 155 Castlereagh Street, Sydney, New South Wales 2000
Attention	Mr Charles Bannister
Phone	02 8999 2888
Fax	02 8088 0731

Reckitt Benckiser (Australia) Pty Ltd

Address	C-/ Allen & Overy, Level 25, 85 Castlereagh Street, Sydney, New South Wales 2000
Attention	Mr Michael Shepherd
Phone	02 9373 7643
Fax	02 9373 7710

Second Floor Litigation Services Pty Ltd

Address 'United Overseas Bank Building', Level 2, 32 Martin Place,
Sydney, New South Wales 2000

Attention

Phone

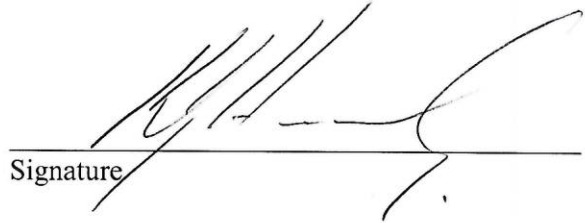
Fax

EXECUTION PAGE

SIGNED, SEALED AND DELIVERED by)
KEITH GEORGE HARDY in the presence of:)
)



Signature of witness



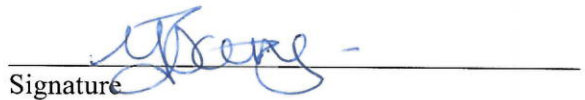
Signature

Anne Ruth Finnerty
Name of witness

SIGNED, SEALED AND DELIVERED by)
YASMINKA JANG in the presence of:)
)



Signature of witness



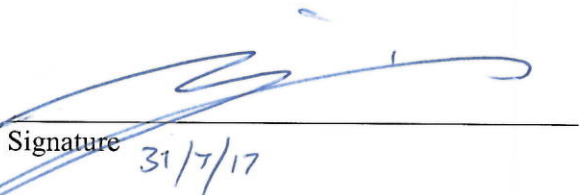
Signature

DIANE GAIL CHAPMAN
Name of witness

SIGNED, SEALED AND DELIVERED by)
BANNISTER LAW in the presence of:)
)



Signature of witness

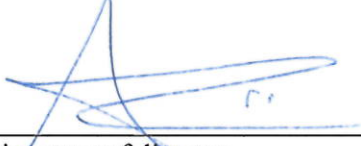


Signature

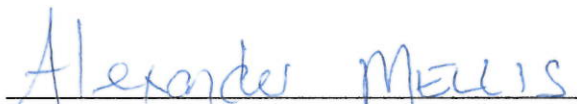
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DIANE GAIL CHAPMAN
Name of witness

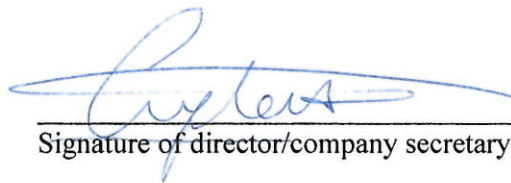
SIGNED, SEALED AND DELIVERED by)
RECKITT BENCKISER AUSTRALIA PTY)
LTD in accordance with its constitution and in the)
presence of:




Signature of director



Name of director



Signature of director/company secretary



Name of director/company secretary

SIGNED, SEALED AND DELIVERED by)
SECOND FLOOR LITIGATION SERVICES)
PTY LTD in accordance with its constitution and)
in the presence of:

Signature of director

Signature of director/company secretary

Name of director

Name of director/company secretary

SIGNED, SEALED AND DELIVERED by)
RECKITT BENCKISER AUSTRALIA PTY)
LTD in accordance with its constitution and in the)
presence of:

Signature of director

Signature of director/company secretary

Name of director

Name of director/company secretary

SIGNED, SEALED AND DELIVERED by)
SECOND FLOOR LITIGATION SERVICES)
PTY LTD in accordance with its constitution and)
in the presence of:

Signature of director

SOLE

Signature of director/company secretary

Name of director

Richard L. Hill

Name of director/company secretary