IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY **CIV-2014-485-11493**

BETWEEN	**STRATHBOSS KIWIFRUIT LIMITED**
	First Plaintiff
AND	**SEEKA KIWIFRUIT INDUSTRIES LIMITED**
	Second Plaintiff
AND	**THE ATTORNEY-GENERAL**
	Defendant

AMENDED STATEMENT OF DEFENCE

29 August 2016

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The defendant by his solicitor says in response to the amended statement of claim dated 8 June 2016:

Parties

1. He admits paragraphs 1(a) and 1(b). He has no knowledge of and therefore denies paragraph 1(c).

2. He admits the terms of the representative order made in this proceeding but otherwise denies paragraph 2, and further says that paragraph 2 contains matters of law to which he is not required to plead.

3. He admits paragraph 3(a). He has no knowledge of and therefore denies paragraphs 3(b) and 3(c).

4. He admits paragraph 4, and further says that reference to the Ministry for Primary Industries (**MPI**) in this amended statement of defence is also reference to the Ministry of Agriculture and Forestry (**MAF**) at the relevant time. MAF merged with the New Zealand Food Safety Authority on 1 July 2010 and with the Ministry of Fisheries on 1 July 2011. The new Ministry changed its name to form MPI on 30 April 2012.

5. He admits paragraph 5.

6. He admits that he is vicariously liable for torts committed by the Crown's servants or agents within the scope of section 6 of the Crown Proceedings Act 1950, to the extent that any acts or omissions occurred within the proper scope of their employment and/or agency, but otherwise denies paragraph 6.

Background

Psa

7. He admits paragraph 7, and further says that:

    7.1 *Pseudomonas syringae* pv. *actinidiae* (Psa) is a pathovar of the Gram-negative, non-spore forming plant pathogenic bacterium *Pseudomonas syringae*;

    7.2 Psa causes bacterial canker of green and gold kiwifruit;

7.3 In addition to the disease symptoms listed in paragraph 7.2, symptoms of Psa also include bacterial ooze (red exudates) and cankers;

7.4 Psa is now found in every major kiwifruit-growing country in the world.

8. He denies paragraph 8, and further says that scientific knowledge regarding Psa has expanded and evolved rapidly since 2010:

8.1 *Pseudomonas syringae* pv. *actinidiae* (Psa) is now known to be a genetically diverse and widely distributed pathogen. Prior to May 2010, scientific knowledge did not differentiate Psa into different genetic strains (haplotypes). In the balance of this amended statement of defence the term "**Psa**" is used to describe the pathogen in generic terms or in circumstances where the strain was unknown.

8.2 From May 2010, Psa was differentiated into two haplotypes. The new haplotype emerging in Italy from 2008 was referred to as "Psa-V" or the "Italian Strain". The older haplotype present in Japan, Korea and China since the 1980s and Italy since 1992 was referred to as "Psa-LV" or the "Asian Strain". This nomenclature was overtaken when four distinct haplotypes were characterised in scientific literature in 2012.

8.3 Since 2012 four distinct Psa haplotypes have been characterised in scientific literature and named in chronological order of detection:

8.3.1 **Psa1**: haplotype present in Japan (1989), Italy (1992) and possibly China (1980s).

8.3.2 **Psa2**: haplotype present in Korea.

8.3.3 **Psa3**: haplotype present in Italy (2008–09), New Zealand (2010), Chile (2010), China (2010), France (2010), Portugal (2010), Spain (2012), and since then in every major kiwifruit-growing country in the world except the USA and Iran. This

haplotype is also referred to as "Psa-V" or the "Italian strain".

8.3.4 **Psa4:** has been widely present across New Zealand. It is likely to have been in New Zealand since before 2007 but was undetected until October 2010, and in Australia (since 1990). Before characterisation in scientific literature in 2012, Psa4 was described as "Asian-like". Since characterisation in 2012, Psa4 is now considered to be a different pathovar, known as *Pseudomonas syringae pv. Actinidifoliorum* (**Pfm**). This pathovar is also referred to in New Zealand as "Psa-LV". The symptoms of Psa4 (Psa-LV) are similar to Psa3 (Psa-V) and include leaf spotting. In the balance of this amended statement of defence the term "**Psa4**" or "**Psa-LV**" is used.

9. He admits paragraph 9 and repeats paragraph 8.3.4 above.

10. He is not required to plead to paragraph 10, but repeats paragraphs 7 and 8 above, and says that the internationally scientifically accepted terminology is Psa Biovar 3, as opposed to Psa-V. In the balance of this amended statement of defence the term "**Psa3**" is used.

Psa3 outbreaks causing bacterial canker in Italy and elsewhere

11. He denies paragraph 11, repeats paragraphs 7 and 8 above and further says that scientific knowledge of the distribution of Psa populations has evolved and expanded rapidly since 2010:

11.1 Psa3 was first characterised in scientific literature in 2012, from isolates collected in Italy in 2008 and 2009.

11.2 Psa was first described from Japan in 1989 as being the causal agent of bacterial canker of kiwifruit in Japan in the 1980s. Psa was later detected in Italy in 1992 and this strain was characterised in scientific literature in 2012 as Psa1.

11.3 Korean strains isolated in 1997-1998 were characterised in scientific literature in 2012 as Psa2.

11.4 The virulent Italian Psa (Psa3):

11.4.1 Emerged in the Latina region of Italy in 2008 and spread to the Emilia-Romagna, Veneto and Piedmont regions of Italy 2009.

11.4.2 Was first reported internationally in the European and Mediterranean Plant Protection Organisation (**EPPO**) report of 1 November 2009 (**November 2009 Alert**) as having been increasingly observed since 2007/2008 in Northern Italy (Lazio) and as "spreading in Italy with increasing incidence".

11.4.3 Differences between the Italian Psa1 (1992) and Psa3 (2008-2009) strains were not detected in 2009. A study published online in May 2010, and in the Plant Pathology journal in October 2010, differentiated between the old "Asian strain" and a new genetic haplotype in the Italian outbreak (initially described as the "Italian strain" and characterised in scientific literature in 2012 as Psa3). However, it did not establish at that time that this new haplotype was more virulent than other Psa strains.

11.5 Psa1 may have been present in China since the 1980s, but little published information was available internationally until 2012 when a strain isolated from the Shaanxi province in China was characterised in scientific literature as Psa3.

11.6 Psa in Chile was officially reported by the Chilean National Plant Protection Organisation in 2011. Bacterial canker in Chilean kiwifruit was first detected in December 2010 and January 2011 following investigations by Servicio Agricola Y Ganadero (Chilean Agricultural and Livestock Service). In 2012, the MPI Plant Health Environment Laboratory (**PHEL**) assisted Chile to validate their finding of Psa3.

11.7 Psa3 is now present in every major kiwifruit-growing country in the world.

12. He denies paragraph 12 and repeats paragraph 11 above.

13. He denies paragraph 13 and repeats paragraph 11 above.

14. He admits that EPPO issued the November 2009 Alert and that selected MPI staff received a copy but otherwise denies paragraph 14, and further says:

    14.1 New Zealand is not a member of EPPO, as membership is limited to countries in the European and Mediterranean region.

    14.2 The introduction to the November 2009 Alert list states:

> "it is not a quarantine list and does not constitute a recommendation for phytosanitary action. …
>
> All pests on the Alert list are selected because they may present a phytosanitary risk for the EPPO region."

    14.3 The November 2009 Alert was based on a change observed in Italy for the behaviour and distribution of Psa. The November 2009 Alert summarised the history of Psa and its presence in Japan (1980s) and the Lazio province of Italy (1992), and noted its spread in Italy since 2007. The November 2009 Alert did not differentiate the Italian Psa as a new virulent haplotype, rather it stated that Psa is "spreading in Italy with increasing incidence".

    14.4 The November 2009 Alert was issued after the June 2009 consignment of "KIWI POLLEN" from China, referred to in paragraph 109 of the amended statement of claim (**June 2009 consignment**), was cleared and released to the importer.

15. He admits paragraph 15, and further says that the November 2009 Alert described the pathway for Psa as "Plants for planting of Actinidia spp. (infected fruits cannot be totally excluded but seem very unlikely)". The 2009 Alert did not refer to pollen.

16. He admits paragraph 16 in that the Psa outbreak in Italy progressed aggressively between March and June 2010, repeats paragraph 11 above and otherwise denies paragraph 16.

17. Save that the journalist was named Kent Atkinson, he admits paragraph 17, and further says:

    17.1 MPI responded to Kent Atkinson's email, explaining the biosecurity system; and

    17.2 The correspondence with Kent Atkinson occurred after the June 2009 consignment was cleared and released to the importer.

18. He admits paragraph 18, repeats paragraphs 8 and 11 above, and further says:

    18.1 The Australian Plant Pathology Website article of July 2010 referred generically to Psa identified in Korea, Japan and Italy (later characterised as Psa1 and 2), but did not differentiate the virulent Italian haplotype (later characterised in scientific literature as Psa3); and

    18.2 The Australian Plant Pathology Website article was issued after the June 2009 consignment was cleared and released to the importer.

19. In relation to paragraph 19, he:

    19.1 Admits that the further EPPO update on 1 August 2010 referred to the potential differentiation of a new haplotype;

    19.2 Denies the remainder of paragraph 19;

    19.3 Repeats paragraphs 8 and 11 above; and

    19.4 Further says that the EPPO update of 1 August 2010 was issued after the June 2009 consignment was cleared and released to the importer.

20. He admits paragraph 20 and repeats paragraph 8 above.

21. In respect of paragraph 21, he repeats paragraph 8 above and:

    21.1 Admits that "Psa-like" symptoms were observed on approximately 23 October 2010 at 37 Mark Road, Te Puke; KPIN 9287 (later called "Restricted Place No 1" or **RP1**) and further says:

        21.1.1 The symptoms were reported to MPI on 5 November 2010;

21.1.2 MPI placed a restricted place notice on the property on 6 November 2010, using Biosecurity Act 1993 (the **Act**) powers; and

21.1.3 Psa was confirmed by PHEL through molecular and biochemical testing on 8 November 2010;

21.2 Further says that "Psa-like" symptoms were observed on a neighbouring property at 36 Mark Road, Te Puke; KPIN 7668 (later called "Restricted Place No 2" or **RP2**) by the orchard owner on 4 November 2010 and:

21.2.1 MPI was notified on 8 November 2010;

21.2.2 MPI placed a restricted place notice on this property on the same date;

21.3 Further says that a biosecurity response was commenced on 5 November 2010. A delimiting survey, targeted surveillance and nationwide passive surveillance and tracing programmes were undertaken;

21.4 Further says that by 29 November 2010, 64 kiwifruit orchards around New Zealand had been issued with RP notices for "Psa-like" symptoms, and 90 kiwifruit orchards around New Zealand were treated as Psa-positive;

21.5 Further says that the identification of those "Psa-like" symptoms on these orchards during this time included both Psa3 (Psa-V) and Psa4 (Psa-LV) as they are now understood; and

21.6 Otherwise denies paragraph 21.

22. He denies paragraph 22, repeats paragraphs 8 and 11 above, and further says that the incubation period for Psa3 varies a great deal depending on factors such as humidity and temperature, type of host and level of infection.

The economic impact of Psa in New Zealand

23. He denies paragraph 23.

24. He admits that Psa3 has impacted on the kiwifruit industry, but otherwise denies paragraph 24. He further says:

24.1 On 18 February 2011, MPI and Zespri entered into a funding agreement with Kiwifruit Vine Health Incorporated (**KVH**), to the effect that the Crown and Zespri would each provide $25 million to KVH for the purpose of managing the initial response, remediating losses and providing payments to orchards, undertaking research and developing a long-term management strategy;

24.2 In mid-2012 in response to the incursion, Zespri commercially released a new cultivar, Gold3 (**G3**), which was tolerant of Psa3. The licenses were sold at a discount to affected growers on a one-for-one basis to replace Hort 16A;

24.3 G3 is more productive than Hort 16A and has a wide market appeal. Zespri growers have a higher fruit yield and greater profit than they had growing Hort 16A;

24.4 G3 licenses have increased significantly in value since June 2012. Orchard prices have risen accordingly;

24.5 As a result of the Psa3 incursion, growers have made significant improvements in orchard hygiene and management, which has led to an increase in crop yield and grower profits;

24.6 During the worldwide Psa3 outbreak, the price of Hort 16A and Hayward cultivars increased due to lack of supply. Growers who were able to harvest crops during this period received increased profits as a result;

24.7 The Plant Variety Rights for Hort 16A expires in 2018; and

24.8 Growers and the kiwifruit industry are now benefiting from record economic returns.

The Sapere Report

25. He admits paragraph 25.

26. He admits paragraph 26, and further says that KVH commissioned a second report from Sapere Research Group about the response to the Psa incursion, entitled "Lessons learned from the response to Psa-V", dated 30 October 2014 (the **Second Sapere Report**).

The biosecurity regime and relevant legislative framework in New Zealand

27. He admits paragraph 27.

28. He admits paragraph 28.

29. Paragraph 29 contains matters of law to which the defendant is not required to plead.

30. Paragraph 30 contains matters of law to which the defendant is not required to plead.

31. Paragraph 31 contains matters of law to which the defendant is not required to plead.

32. Paragraph 32 contains matters of law to which the defendant is not required to plead.

33. Paragraph 33 contains matters of law to which the defendant is not required to plead.

34. Paragraph 34 contains matters of law to which the defendant is not required to plead. He further says that:

    34.1 MPI develops approximately five to ten new Import Health Standards (**IHS**) per year, and reviews approximately 15 to 20 IHS per year, according to a programme of work set out at the beginning of the year, prioritised according to a number of criteria including importance, strategic fit, net benefit, feasibility, barriers and amount of work expected;

    34.2 There are currently more than 300 IHS in place; and

34.3 Industry are able to produce a risk assessment in support of a change to an IHS and are also able to provide technical information in support of measures contained in an IHS.

35. Paragraph 35 contains matters of law to which the defendant is not required to plead. He further says that MPI processes approximately 2,500 to 3,000 requests for import permits per year.

36. Paragraph 36 contains matters of law to which the defendant is not required to plead.

37. Paragraph 37 contains matters of law to which the defendant is not required to plead.

38. Paragraph 38 contains matters of law to which the defendant is not required to plead, but he admits that New Zealand is a signatory to international conventions including the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (**SPS Agreement**) and the International Plant Protection Convention (**IPPC**), both of which are referred to and relied on in full and according to their terms. IHS are New Zealand's phytosanitary measures for the purposes of the SPS Agreement and IPPC.

39. Paragraph 39 contains matters of law to which the defendant is not required to plead.

40. He admits paragraph 40, and further says that the Biosecurity New Zealand Risk Analysis Procedures (v1) 12 April 2006 outline some circumstances in which a risk assessment "may" be initiated.

41. He admits paragraph 41, and further says that the Implement and Monitor IHS Events and Trigger Criteria Checklist "assists MPI to determine" whether to request a review of an IHS.

42. He admits that within MPI at the relevant times groups were set up to analyse emerging risks, but otherwise denies paragraph 42. He further says:

42.1 The Biosecurity and Risk Assessment Group assesses biological risks to help avoid, remove or effectively manage the harm that pests or diseases can do to New Zealand's economy, environment or health.

42.2 The Plant Imports and Exports Group develops and reviews IHS under the Act and provides technical expertise to minimise the introduction of exotic (regulated) plant pests and diseases.

42.3 PHEL provides diagnostic testing and technical expertise for exotic (regulated) pests and diseases affecting plants and the environment.

43. He denies paragraph 43 and says:

43.1 EROC was responsible for undertaking global and national scanning to identify new and emerging risks and opportunities, and assign those issues that meet the defined threshold to the appropriate part of MPI (including the border or post border risk management committees). EROC was disestablished in February 2011 and its responsibilities were transferred to the Science and Risk Advisory Group.

43.2 Informal Cross-Directorate Groups were formed in approximately mid-2010 to facilitate sharing of information across directorates. The informal groups used their professional networks and information received to inform their daily role. Commercial kiwifruit orchards formed part of the agricultural and horticultural plants network.

Import permits

44. He admits paragraph 44 to the extent that he is required to plead.

45. He admits paragraph 45 to the extent that he is required to plead. He further says that MPI processes approximately 2,500 to 3,000 requests for import permits per year.

Border processes

46. He admits paragraph 46, and further says that:

46.1 Craft is another major entry pathway for risk goods.

46.2 New Zealand's biosecurity regime provides for the effective management of risks associated with the importation of risk goods.

46.3 In 2010-11, 4.9 million crew and passengers arrived in New Zealand, were risk assessed and processed through MPI's risk management and verification systems. The vast majority (99%) arrived by air, with the remainder arriving as passengers on cruise ships and private yachts. Approximately 4.3 million cargo consignments arrive each year, and MPI evaluates and manages the risks associated with 190,000 consignments. New Zealand has 14 airports and 23 seaports designated as Places of First Arrival.

46.4 Biosecurity relies to an extent on voluntary compliance, including accurate declarations by inbound passengers and importers.

46.5 Biosecurity also relies to an extent on offshore measures such as treatment, inspection and issue of phytosanitary certificates.

47. Paragraph 47 contains matters of law to which the defendant is not required to plead.

48. He admits paragraph 48.

49. He denies paragraph 49 and says that the specific entry requirements for nursery stock vary depending on the requirements under the IHS schedule and the import permit. The entry requirements for pollen depended on the requirements specified in the import permit.

The import requirements for Kiwifruit Nursery Stock and Pollen

50. He admits paragraph 50, and further says that in addition to the Standard 155.02.06: *Importation of Nursery Stock* (**the nursery stock IHS**) there are other standards in place relevant to the importation of nursery stock, including:

50.1 PBC.NZ.TRA.PQCON: Specification for the Registration of a Plant Quarantine or Containment Facility, and Operator (the Post Entry Quarantine (PEQ) Standard), issued in 1999 which describes the requirements for Post Entry Quarantine (**PEQ**) facilities, including how the material (including *Actinidia*) must be held in the PEQ facility.

50.2 Standard 155.04.03: A standard for diagnostic facilities which undertake new organisms, excluding animal organisms (the Diagnostic Facility Standard) issued in 2006 which describes the requirements for diagnostic facilities. For nursery stock (including *Actinidia*) this includes facilities which carry out testing of diagnostic samples (eg, when symptoms are observed on the plants in arrival in New Zealand or in PEQ, and the causal organism needs to be identified) and pre-determined testing (eg, the mandatory testing that must occur as prescribed in the nursery stock IHS).

50.3 PIT.OS.TRA.ACPQF: Accreditation of Offshore Plant Quarantine Facilities and Operators (the Offshore Quarantine Facility Standard), issued in 2001, which describes the requirements for facilities in other countries which have been audited and accredited by MPI to undertake quarantine, inspections and testing of specified horticultural commodities (excluding *Actinidia*) prior to export in accordance with the nursery stock IHS. These facilities must be certified by the exporting National Plant Protection Organisation (**NPPO**) on the phytosanitary certificate.

Nursery stock IHS and Actinidia schedule

51. He admits paragraph 51, and further says:

51.1 The nursery stock IHS has 161 specific schedules for nursery stock regulating the import of more than 19,200 specific species, including *Actinidia*.

51.2 Prior to its suspension in September 2013, the *Actinidia* schedule of the nursery stock IHS listed 17 regulated pests, including Psa.

51.3 The nursery stock IHS allows the importation of approved plant species in the following forms: whole plants, including rooted cuttings; cuttings (no roots), including dormant (budwood) and non-dormant (with active growth) cuttings; dormant bulbs (roots, tubers); and pollen.

2004 amendment to Actinidia schedule of the nursery stock IHS

52. In relation to paragraph 52, he:

52.1 Admits that the quotes in paragraphs (a) to (e) are accurate as taken from MPI's "CAT file" created in 2003;

52.2 Repeats paragraphs 8 and 11 above and says the CAT file was created in 2003 and the Psa referred to is now known to be the "Asian strain" of Psa then present in Japan and China, characterised in scientific literature in 2012 as the Psa1 haplotype;

52.3 Further says that Psa was first included as a quarantine pest and in the nursery stock IHS in August 1998, and post entry quarantine of cuttings and tissue cultures was required; and

52.4 Otherwise denies paragraph 52.

53. He admits paragraph 53, save that the following requirements on imports of tissue culture were imposed:

53.1 An import permit was required;

53.2 A Phytosanitary Certificate was required, with the NPPO of the exporting country only to issue a certificate if they were satisfied that the relevant nursery stock had been: inspected and was free from visually detectable regulated pests; treated for regulated insects/mites as described in MPI's approved treatment paper within 7 days of shipping (cuttings only); and held in a manner to ensure that infestation/reinfestation does not occur following certification;

53.3 If satisfied that the pre-shipment activities have been undertaken, the exporting country NPPO must confirm this by recording the relevant treatments;

53.4 Tissue cultures cannot contain charcoal; and

53.5 All imports must go into a level 3 PEQ facility, where they will be grown for a minimum of six months, with regular inspections, testing

and treatment for regulated pests as specified in the document "Inspection, Testing and Treatment Requirements for Actinidia".

53.6 He says further that these requirements did not apply to pollen. Paragraph 2.2.3 of the 28 May 2004 nursery stock IHS required that for importation of pollen "a prior import permit must be obtained from the Permit Officer."

54. He denies paragraph 54, repeats paragraphs 52 and 53 above, and further says:

54.1 In addition to visual inspection, each plant had to be tested for Psa using a PCR test, being either OCTF/OCTR primers *or* PAV 1/P 22 primers, but not both;

54.2 The use of transmission electron microscopy was to test for viruses but was not used to test for bacteria, such as Psa; and

54.3 PCR Testing was not required for pollen.

2006 amendment to Actinidia schedule of the nursery stock IHS

55. He denies paragraph 55, repeats paragraphs 53 and 54 above, and further says that on 9 August 2006 the *Actinidia* schedule was amended to update testing requirements for Psa following development by PHEL of the Post Entry Quarantine Testing Manual for Actinidia. The amendment removed the option of using OCTF/OCTR primers which did not reliably detect Psa, but retained the PAV 1/P 22 primers which had been supported by PHEL testing and ratified in the PHEL Testing Manual for Actinidia.

56. He admits paragraph 56, save that the 28 May 2004 version of the nursery stock IHS, clause 2.2.3 stated:

> "[a] prior import permit must be obtained from the Permit Officer."

He further says that this wording remained until the nursery stock IHS was amended on 1 October 2009.

2009 amendment to nursery stock IHS pollen requirements

57. With respect to paragraph 57, he:

57.1 Admits that the wording of the nursery stock IHS was changed, save to say that from 1 October 2009 clause 2.2.3 stated:

> "An import permit must be obtained from MAFBNZ prior to import.
>
> Prior to issuing the permit to import, MAFBNZ will assess, on a case by case basis, the requirements that must be met to import the pollen. All import requirements will be detailed on the permit to import."

57.2 And further says that this change in wording occurred after the June 2009 consignment was cleared and released to the importer.

Other relevant IHS

58. He denies paragraph 58, and further says:

58.1 The Industries Standard 152.02 Importation of Fresh Fruit and Vegetables into New Zealand allows for the importation and clearance of fresh fruit and vegetables into New Zealand, including kiwifruit;

58.2 The *Actinidia* schedule within the IHS: 155.02.05 Importation of Seed for Sowing provides for the importation of kiwifruit seed for propagation;

58.3 The BNZ.NPP.HUMAN: Importation into New Zealand of Stored Plant Products Intended for Human Consumption IHS provides for the importation of frozen, dried, cooked or preserved kiwifruit plant material; and

58.4 The MPI.STD.PLANTMATERIAL: Dried and Preserved Plant Material, and Fresh Plant Material for Testing, Analysis or Research provides for the importation of dried or preserved plant material for other purposes.

Pollen imports

59. He admits paragraph 59, and further says that:

59.1 Kiwi Pollen provided detailed information following requests from MPI regarding the collection and milling process of the exporters,

including that pollen would be frozen and that "flower buds must be milled within 18 hours of harvesting, therefore they are always milled in the location they are harvested, and the pollen processed there"; and

59.2 MPI relied on this information when granting the import permits.

60. He admits paragraph 60 and repeats paragraph 59.1 above.

61. He admits paragraph 61, and further says:

61.1 Kiwi Pollen imported 6 commercial consignments of kiwifruit pollen, 4 from Chile and 2 from China, and all between 2008 and 2010 as set out in Schedule 1 to this amended statement of defence; and

61.2 MPI refused a request in 2007 by Kiwi Pollen to import pollen collected in Italy by the vacuum method.

62. He admits paragraph 62, and further says that the 3 permits were issued to Plant & Food Research for the importation of kiwifruit pollen for research purposes related to the Italian Psa outbreak of 2008-2009 as set out in Schedule 1 to this amended statement of defence.

63. He denies paragraph 63, and refers to each pollen import permit for its terms. Details of pollen permits and pollen importation are set out in Schedule 1 to this amended statement of defence.

64. With respect to paragraph 64, he:

64.1 Admits the first Chinese permit, issued on 16 April 2007, and the first Chilean permit, issued on 7 December 2007, contained the special conditions quoted in paragraph 64 of the amended statement of claim;

64.2 Says further that neither permit was used; and

64.3 Otherwise denies the allegations in paragraph 64.

65. He admits paragraph 65, and further says that Plant & Food Research imported kiwifruit pollen for research purposes from Italy in 2010, which was

after the November 2009 Alert regarding the spread of Psa3 in Italy. Plant & Food Research collected pollen from areas in Italy in which Psa was known to occur to aid in its research.

The Card Paper

66. He admits that the Card Paper was taken into account by MPI in deciding to issue permits to Kiwi Pollen for the importation of pollen from Chile and China (on conditions), but otherwise denies paragraph 66.

67. He denies paragraph 67, and further says:

    67.1 The quotation in paragraph 95 of the Sapere Report comes from a PHEL Report called "Pollen-transmitted Plant Pathogens" (**PHEL Report**), and not from the Card Paper;

    67.2 The PHEL Report was an MPI initiated research paper to assess the pests and diseases transmitted by pollen, to determine which diseases MPI should be concerned about when considering requests to import pollen;

    67.3 The PHEL Report was written for an internal audience, and was not released publicly for comment. However it was internally peer reviewed by two members of MPI, and externally peer reviewed by an Associate Professor of Biological Sciences at the University of Auckland, and later formed the basis of the Card Paper;

    67.4 The final version of the PHEL Report (2007) was provided by MPI to Sapere.

68. He denies paragraph 68, repeats paragraph 67 above, and further says that the Card Paper's purpose was to "seek to assist countries [signatories to the IPPC] to develop appropriate phytosanitary measures by considering the pests that are transmitted by pollen" (p. 455).

69. He denies paragraph 69, repeats paragraph 67 above, and further says that the "initial draft" referred to at paragraph 97 of the Sapere Report was not a draft, but a separate report i.e. the PHEL Report.

70. He denies paragraph 70, repeats paragraphs 67 and 69 above, and further says:

70.1 The PHEL Report and the Card Paper represented the scientific opinion of the time.

70.2 There was no scientific evidence that Psa was associated with pollen until the Plant & Food Research findings in May 2010.

70.3 There was no scientific evidence that Psa could be transmitted via pollen until limited experimentation in 2011. Recent experimentation in 2013 and 2014 has shown that Psa can be transmitted through pollen in limited circumstances where conditions are optimal. It is still unclear how readily infection of kiwifruit vines via Psa infested pollen occurs during commercial orchard practices.

71. He admits that the three quotes in paragraph 100 of the Sapere Report are accurately cited, but otherwise denies paragraph 71. He further says that the comments made by the Risk Analysis team were directed at the PHEL Report, not the Card Paper. The third quote in paragraph 100 of the Sapere Report also appears out of context, and the full comment made was:

> "What all this shows is that pollen can be contaminated by fungi (and bacteria) and as such pollen can act as a vector of fungi and bacteria. Given that the pollen used in trade would be mechanically applied to the plant, bee transmission is not important."

72. He denies paragraph 72, and further says:

72.1 Paragraph 101 of the Sapere Report refers to a paper titled "The Role of Seed and Pollen in the Spread of Plant Pathogens Particularly Viruses" by HC Phatak from 1980, and two further papers from scientific journals from 1944 and 1967, as acceptable justification for the proposition that MPI ought to have considered pollen as a pathway for Psa3.

72.2 The 1980 Phatek article and the 1944 and 1967 articles discussed contamination of pollen with bacteria, not transmission of bacterial diseases through pollen.

72.3 As referred to in paragraph 70 above, there was no scientific data in 2006 to suggest that Psa could be associated with, or transmitted through, kiwifruit pollen.

73. He admits that hand-picked, commercially milled pollen will contain minute amounts of plant material, the size of pollen grains or smaller, but otherwise denies paragraph 73, and further says that MPI refused a request in 2007 by Kiwi Pollen to import pollen which had been collected in Italy by the vacuum method.

74. He admits that MPI required kiwifruit cuttings and tissue culture to be tested for Psa from 2004, but otherwise denies paragraph 74. He further says that the Psa Data Sheet, prepared for the 2004 nursery stock IHS amendment, records the Phytosanitary risk of Psa as: "Tissue culture, budwood/cuttings (stems only) – Kiwifruit".

75. He denies paragraph 75, and repeats paragraphs 66 to 70 and 73 above, and further says:

    75.1 A risk assessment is not required to issue an import permit under an IHS;

    75.2 MPI's officers were aware of the risk of contamination of pollen by bacteria and other pests, but not of any risk of transmission;

    75.3 Conditions were imposed on Kiwi Pollen import permits to ensure pollen was milled from hand-picked unopened flower buds to manage the risk of contamination of pollen;

    75.4 There was no scientific evidence at that time that Psa could be transmitted by pollen, as outlined in paragraphs 70 and 72 above;

    75.5 Kiwi Pollen informed MPI that pollen would be milled within 18 hours of picking and imported frozen, as referred to in paragraph 59 above;

    75.6 Strict conditions were imposed on Plant & Food Research import permits, where pollen was being imported for research purposes from areas known to have Psa, as outlined in paragraphs 62 and 65 above.

76. He denies paragraph 76, and repeats paragraphs 70 and 72 to 75 above.

77. He denies paragraph 77, and further says that consultation obligations in the Act relate only to the development of IHS and pest management plans (formerly pest management strategies). MPI policies require consultation on standards, risk analyses, pest management strategies, policy statements and legislation. There is no obligation on MPI to consult with industry regarding decisions made under an IHS. MPI has obligations of confidentiality with respect to permit applications and information that may be commercially sensitive.

78. He denies paragraph 78, repeats paragraph 77 above, and further says:

78.1 The pollen imported by Kiwi Pollen was imported for commercial use in New Zealand orchards and for export; and

78.2 Commercial importers of pollen, such as Kiwi Pollen, are required to properly inform grower consumers of the origin of the imported pollen, as required under the Fair Trading Act 1986.

79. He denies paragraph 79 and repeats paragraphs 8, 11, 60, 70, 73 and 75 above.

MPI's knowledge of and response to the Italian Psa3 outbreak

80. He denies paragraph 80, repeats paragraphs 8 and 11 to 19 above, and further says the EPPO alerts of November 2009 and August 2010 and documentation from April 2010 occurred after the June 2009 consignment was cleared and released to the importer.

81. He denies paragraph 81, and repeats paragraphs 8, and 11 to 19 above and further says:

81.1 Following the EPPO Alert of 1 November 2009 regarding the spread of Psa in Italy, an internal priority assessment of the import requirements for *Actinidia* was carried out in late 2009/early 2010;

81.2 Between October and November 2010, in light of the Italian outbreak and increasing uncertainty about the current testing methods for Psa, MPI decided to review the testing requirements for the detection of Psa, and if appropriate, the *Actinidia* schedule to the nursery stock IHS;

81.3 MPI convened the Germplasm Advisory Committee (**GERMAC**) in March 2010 as a consultative forum between the plant germplasm import industry (including Zespri) and MPI. The role and functions of GERMAC included:

> "To assist in the establishment of industry strategy, policy, standards, specifications and codes of practice based on industry consultation and advice regarding the limits of legislation to decision-making bodies…
>
> To initiate and/or examine proposals for the development of New Zealand strategy, policy, standards and codes to address risks and opportunities to the industry."

81.4 GERMAC discussed issues with the nursery stock IHS in detail, however, Psa was not raised as an issue at any of the GERMAC meetings in 2010;

81.5 The EPPO alerts of November 2009 and August 2010 were issued after the June 2009 consignment was cleared and released to the importer.

82. He denies paragraph 82, repeats paragraphs 41 and 81 above, and further says:

82.1 The risk of Psa entering New Zealand through imports of budwood, tissue culture or other nursery stock pathways was managed through adequate quarantine and testing controls;

82.2 The conditions for import permits of kiwifruit pollen were assessed on a case by case basis, in reliance on information provided by the importer requesting the import permit;

82.3 The risk of Psa entering New Zealand through the fruit pathway was unlikely, however, MPI initiated a pest risk assessment when requested by industry in October 2010;

82.4 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times;

82.5 MPI first became aware of scientific evidence associating Psa with pollen by email of Plant & Food Research's provisional findings on 30 September 2010;

82.6 There was insufficient scientific evidence, as required by the SPS Agreement, that Psa could be transmitted through pollen until recent experimentation in 2013 and 2014;

82.7 The quotes cited in paragraph 82 come from page 32 of the Biosecurity New Zealand Risk Analysis Procedures and that those Procedures give examples of a number of situations when the need for a new risk assessment "may arise";

82.8 The EPPO alerts of November 2009 and August 2010 were issued after the June 2009 consignment was cleared and released to the importer.

83. He denies paragraph 83, repeats paragraphs 8, 11 to 19 and 70 above, and further says:

83.1 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times; and

83.2 The EPPO alerts of November 2009 and August 2010 were issued after the June 2009 consignment was cleared and released to the importer.

84. He admits that the Italian Psa outbreak presented a possible biosecurity threat to New Zealand's kiwifruit industry, but otherwise denies paragraph 84 and repeats paragraphs 8, 11 to 19 and 82 above.

85. He denies paragraph 85, repeats paragraphs 8, 11 to 19, 60, 70, 73, 75, 77, 81 and 82 above, and further says:

85.1 The power to prevent importation of plants and plant material is governed by the SPS Agreement and there is limited power to impose precautionary measures;

85.2 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times;

85.3 The EPPO alerts of November 2009 and August 2010 were issued after the June 2009 consignment was cleared and released to the importer;

85.4 The focus of concern by both industry and MPI was the importation of fruit as a pathway for Psa. Industry raised fruit as a risk pathway in approximately September 2010 and MPI formed a working group to assess the risk of Psa entering via fruit; and

85.5 The kiwifruit industry, through Zespri, invested in biosecurity research in relation to the Italian experience of Psa, using agencies such as Plant & Food Research. MPI was notified of the preliminary findings of this research on 30 September 2010.

86. He denies paragraph 86, and repeats paragraphs 52, 55, 81, and 82 above.

87. He denies paragraph 87, and further says that the Australian Quarantine Inspection Services (**AQIS**) informed MPI that as of October 2010, Australia had no specific active testing for Psa for imports of *Actinidia* nursery stock. Instead the protocol was three months' post entry quarantine with a minimum of two visual inspections.

88. He admits that EROC met six times between November 2009 and October 2010 and that Psa was not discussed during those meetings, and repeats paragraph 43 above, but otherwise denies paragraph 88.

89. He admits that the Risk Analysis team was aware of the Italian outbreak prior to the detection of Psa in New Zealand but otherwise denies paragraph 89, and repeats paragraphs 81 and 82 above.

90. He admits that the listed emails were sent but otherwise denies paragraph 90, and further says:

90.1 The Team Manager, Fresh Produce Imports' comments were focussed on the transmission of Psa by fruit and she also noted that a risk assessment had been completed "for the species not the strain";

90.2 The email from a member of the Risk Analysis Team dated 8 April 2010 at 10:55pm stated that there was no risk analysis supporting the

import standards, but did not question whether they remained appropriate in light of Psa;

90.3 The email of 16 April 2010 was sent at 12:07pm and said that Psa was a "possible discussion item for EROC, along with an emerging fruit pest called Drosophilia suzukii";

90.4 A further email by the Manager, Fresh Produce Imports sent on 16 April at 12:39pm in response to the 12:07pm email, says: "Please note this canker is identified as a hazard on [n]ursery stock pathway and we require specific tests";

90.5 The emails referred to in the Sapere Report were sent in 2010, after the June 2009 consignment was cleared and released to the importer; and

90.6 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times.

91. He denies paragraph 91 and repeats paragraphs 8, 11 and 70 above.

92. He denies paragraph 92 and repeats paragraphs 8, 11, 81, 82 and 85 above.

93. He denies paragraph 93, repeats paragraphs 8, 11, 70, 81 and 82 above, and further says the import controls were adequate in light of the scientific knowledge at all relevant times. He denies that MPI continued to rely on current import requirements for fruit and repeats paragraphs 82 and 85 above.

94. He admits that communications between MPI and Plant & Food Research occurred on the dates pleaded but otherwise denies the allegations in paragraph 94, and says further:

94.1 The email from Plant & Food Research of 17 May 2010 was written with reference to the importation of Italian kiwifruit from Latina to New Zealand;

94.2 MPI's response to Plant & Food Research on 25 June 2010 was similarly focussed on the spread of Psa via infected fruits, and noted

that the November 2009 Alert stated that fruit as a possible pathway "appears to be very unlikely";

94.3 Plant & Food Research's letter of 20 August 2010 noted that MPI required "further published evidence of the ability of [Psa] to be transmitted by whole undamaged kiwifruit before considering any additional phytosanitary measures" for importing green kiwifruit from Italy, and said that Plant & Food Research was initiating research to establish whether Psa could survive treatment under existing protocols for kiwifruit imports;

94.4 In response to Plant & Food Research's letter of 20 August 2010, an MPI staff member noted that it was "assumed that spread of this pathogen is via the planting of infected propagation material", and that MPI would "continue to monitor the literature closely and hopefully will be able to get in touch with Plant & Food Research as they progress through their research";

94.5 The risk of pollen being associated with Psa was first mentioned to MPI on or about 30 September 2010 and was based on preliminary research only;

94.6 A subsequent meeting on 22 October 2010 with Plant & Food Research and Zespri still only focused on the risks of fruit import. The meeting noted a programme of research commissioned in Italy to better understand the life cycle of Psa, including "determining the survival of the pathogen on fruit, pollen and other traded kiwifruit parts";

94.7 Plant & Food Research's research was published in New Zealand Plant Protection in 2011 and only demonstrated an association of Psa with pollen, rather than transmission. The author noted at p. 250:

> "all the pollen samples from which live cells of Psa were found are samples originating from Italy, where pollen is collected by vacuum. One cannot rule out that the presence of Psa in some of those samples was the result of collecting extraneous material itself contaminated with Psa"; and

> "whether Psa is directly associated with the pollen or collected at the same time as the pollen, pollen collected from an infected orchard could contain Psa and therefore presents the risk of distributing the pathogen to orchards not yet infected. So far, there is no proof that this even happened."

94.8 The correspondence between Plant & Food Research and MPI took place in 2010, after the June 2009 consignment was cleared and released to the importer; and

94.9 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times.

95. He denies paragraph 95, repeats paragraphs 38, 68, 70, 75 and 94 above, and further says:

95.1 The research by Plant & Food Research on association of Psa with pollen was conducted in early 2010 and MPI was informed of this in September 2010, after the June 2009 consignment was cleared and released to the importer. The research was subsequently published in 2011; and

95.2 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times.

96. He denies paragraph 96, repeats paragraphs 59, 61, 70, 73 and 75 above, and further says:

96.1 On 12 November 2010, MPI cancelled all import permits for kiwifruit pollen, and refused all further requests from industry to issue any further import permits, other than those requested to be imported into MPI-approved containment facilities such as Plant & Food Research, for research purposes;

96.2 In August 2012, the nursery stock IHS was amended to prohibit imports of pollen, in response to the Management Action Plan July 2012;

96.3 In September 2013, MPI suspended the *Actinidia* schedule under the nursery stock IHS;

96.4 Following a request from industry in October 2012 to import kiwifruit pollen for commercial pollination of orchards, MPI commenced research and consultation on a specific IHS for kiwifruit pollen;

96.5 The correspondence between Plant & Food Research and MPI took place in 2010, after the June 2009 consignment was cleared and released to the importer; and

96.6 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times.

97. He denies paragraph 97, repeats paragraphs 8, 11, 38, 70 and 75 above and further says that MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times.

98. He denies paragraph 98, repeats paragraphs 81 to 97 above and further says that MPI's actions were reasonable on the basis of:

98.1 The scientific knowledge at all relevant times;

98.2 New Zealand's international obligations under the SPS Agreement;

98.3 The resourcing available to MPI for risk assessment;

98.4 The priority risks for MPI at the time; and

98.5 Industry considerations, including the need to balance risk against the industry's need for pollen for artificial pollination.

99. He admits paragraph 99, repeats paragraph 94 above, and further says:

99.1 MPI was first informed of this research in September 2010;

99.2 MPI and Plant & Food Research are separate entities. Plant & Food Research undertakes research for a variety of clients, some of which is confidential;

99.3 This research related to the association of Psa with pollen, not transmission of Psa by pollen; and

99.4 This research was completed after the June 2009 consignment was cleared and released to the importer.

100. In respect of paragraph 100, he:

100.1 Admits that members of the Plant Imports and Exports Group knew pollen was being imported from China (and Chile) by a commercial importer;

100.2 Repeats paragraphs 8, 11, 38 and 70 above;

100.3 Further says that:

100.3.1 Data was lacking on the situation of Psa in China;

100.3.2 May 2010 was after the June 2009 consignment was cleared and released to the importer; and

100.4 Otherwise denies paragraph 100.

101. He denies paragraph 101 and repeats paragraphs 38, 68, 70, 85 and 96 above.

102. He admits that the email containing Plant & Food Research's preliminary finding was sent to at least four senior MPI staff members on 1 October 2010, but otherwise denies paragraph 102, repeats paragraph 94 above, and further says:

102.1 The email contained a preliminary finding that Psa could be associated with pollen, to be followed up by a report from Plant & Food Research;

102.2 MPI noted the Plant & Food Research report was "likely to arrive towards the end of the next week and decisions on what to do next were likely to be required w/c 11 Oct"; and

102.3 The email was sent to MPI after the June 2009 consignment was cleared and released to the importer.

103. He admits paragraph 103 but repeats paragraph 102 above.

104. He denies paragraph 104, repeats paragraphs 102 and 103 above, and further says that the email was sent to MPI after the June 2009 consignment was cleared and released to the importer.

105. He denies paragraph 105, and further says:

105.1 Scientific knowledge regarding Psa was evolving rapidly in 2010 as outlined in paragraphs 8, 11 to 19 and 70 above;

105.2 The import controls regarding nursery stock were adequate in light of scientific knowledge of the time, as outlined in paragraph 82 above;

105.3 MPI took actions including an internal priority assessment of the import requirements for *Actinidia* in late 2009/early 2010; reviewing the testing requirements for the detection of Psa in nursery stock, convening GERMAC as outlined in paragraph 81 above;

105.4 MPI commenced a risk assessment for fruit as outlined in paragraphs 85 and 94 above; and

105.5 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times.

Import permits and change to the wording

106. He admits paragraph 106.

107. He admits that the second and third China permits, and the second and third Chile permits, contained the following conditions:

> "unopened male flower buds must be hand collected. The pollen may be milled prior to import',

but otherwise denies paragraph 107 and repeats paragraphs 59 and 61 above.

108. In respect of paragraph 108, he:

108.1 Admits that the second China permit did not contain conditions for the disposal of plant waste material;

108.2 Repeats paragraphs 59 and 61 above;

108.3 Further says that conditions for disposal of plant material were unnecessary as the second China permit was given for the importation of frozen kiwifruit pollen, and not kiwifruit plant material for milling in New Zealand or infected material for research; and

108.4 Otherwise denies paragraph 108.

The Import of Anthers

109. In respect of paragraph 109, he:

109.1 Admits that a consignment labelled as "KIWI POLLEN" was imported from China by Kiwi Pollen and was cleared and released to the importer on 30 June 2009 (the **June 2009 consignment**);

109.2 Has insufficient knowledge and therefore denies the June 2009 consignment was a consignment of "anthers":

109.3 Further says that:

109.3.1 The invoice dated 5 June 2009 from Hangzhou Yuehao Agricultural Technology Consulting Co Limited, China, stated that the consignment was "KIWI POLLEN" and "4.50kgs/carton";

109.3.2 The phytosanitary certificate dated 8 June 2009 described the consignment as 1 carton of "KIWI POLLEN" from Shaanxi, weighing 4.5kgs. The additional declaration stated: "pollen has been produced from hand collected and unopened male flower buds only";

109.3.3 The customs waybill issued on 9 June 2009 records that 1 carton of "KIWI POLLEN", gross weight of 11kgs, was shipped to New Zealand;

109.3.4 Kiwi Pollen's agent, International Cargo Express, lodged electronic information with MPI on 23 June 2009 in respect of the forthcoming June 2009 consignment;

109.3.5 A hold was placed on any release of the forthcoming consignment until an original phytosanitary certificate was provided;

109.3.6 The June 2009 consignment arrived in New Zealand on 24 June 2009;

109.3.7 Kiwi Pollen arranged for the original phytosanitary certificate to be couriered to International Cargo Express on 26 June 2009;

109.3.8 The original phytosanitary certificate was received by MPI on 30 June 2009;

109.3.9 The declaration on the phytosanitary certificate dated 8 June 2009 met the requirements of the second China permit; and

109.3.10 The June 2009 consignment was released by MPI on 30 June 2009;

109.4 Otherwise denies the allegations in paragraph 109.

110. He admits paragraph 110.

111. He denies paragraph 111, and repeats paragraphs 59 and 73 above.

112. He admits that anthers are plant material and not pollen, but otherwise denies paragraph 112 and repeats paragraphs 59 and 73 above.

113. He denies paragraph 113.

114. He admits that any importation of anthers would not meet the terms of the second China permit, but otherwise denies paragraph 114 and repeats paragraphs 60 and 109 above.

115. He denies paragraph 115, and repeats paragraph 109 above.

116. In respect of paragraph 116, he:

116.1 Admits that Psa was included as a quarantine pest in the nursery stock IHS;

116.2 Repeats paragraphs 8, 11, 52 and 74 above;

116.3 Further says that:

116.3.1 the November 2009 Alert, correspondence with Plant & Food Research and enquiries from Kent Atkinson all occurred after the June 2009 consignment was cleared and released to the importer; and

116.3.2 MPI's actions were reasonable on the basis of the scientific knowledge at all relevant times; and

116.4 Otherwise denies paragraph 116.

117. In relation to paragraph 117, he:

117.1 Admits that the first Psa symptoms were reported as first noticed in October 2010 on RP1 and RP2;

117.2 Repeats paragraphs 21 and 109 above;

117.3 Further says that:

117.3.1 In an interview on 13 December 2010, and at subsequent interviews, a director of Kiwi Pollen informed MPI investigators that she processed the June 2009 consignment at Kiwi Pollen's main office at Main North Road, Te Puke, and discarded it following viability testing, by putting it in a plastic bag in the rubbish bin outside Kiwi Pollen's main office at Main North Road, Te Puke, and that the June 2009 consignment was not used to pollinate any kiwifruit plants;

117.3.2 MPI tested the orchard next to Kiwi Pollen's main office at Main North Road, Te Puke. The orchard tested negative for Psa, and did not report Psa until October 2011;

117.3.3 A biosecurity response was commenced on 5 November 2010. A delimiting survey, targeted surveillance and

nationwide passive surveillance and tracing programmes were undertaken;

117.3.4 By 29 November 2010, 64 kiwifruit orchards around New Zealand had been issued with RP notices for "Psa-like" symptoms, and 90 kiwifruit orchards around New Zealand were treated as Psa-positive; and

117.3.5 The identification of those "Psa-like" symptoms on these orchards during this time included both Psa3 (Psa-V) and Psa4 (Psa-LV) as they are now understood; and

117.4 Otherwise denies paragraph 117.

118. In respect of paragraph 118, he:

118.1 Refers to Schedule 1 to this amended statement of defence, which lists the import permits that were not used;

118.2 Denies there is a scientific consensus on any "operative causative period" for Psa incubation;

118.3 Repeats paragraphs 8, 11, 22 and 117 above;

118.4 Further says that three permits were in respect of pollen imported from China, of which:

118.4.1 2007031028 was never used;

118.4.2 2009036858 was used to import the June 2009 consignment from Hangzhou Yuehao Agricultural Technology Consulting Co Limited, Shaanxi, China, referred to in paragraph 109 above;

118.4.3 2010040083 was used to import the 2010 consignment from Shenzhen Jialongxing Trade Co Ltd, China. A director of Kiwi Pollen informed MPI in interviews and in email correspondence that this consignment was damaged during a

border inspection, and also exhibited low viability. This consignment was handed over to MPI in late 2010; and

118.5 Otherwise denies paragraph 118.

119. In respect of paragraph 119, he:

119.1 Admits that an Otago University study concluded that the New Zealand strain of Psa3 contained genetic elements similar to those found in the Psa3 in Shaanxi, China;

119.2 Repeats paragraphs 109 and 117 above;

119.3 Admits that the phytosanitary certificate for the June 2009 consignment notes the place of origin as Shaanxi, China;

119.4 Further says that:

119.4.1 There has been a rapid evolution and expansion of scientific knowledge about genomic analysis of Psa since 2010, but there is no scientific consensus on the origins of Psa;

119.4.2 The Otago University finding is disputed by another academic study (McCann et al 2013);

119.4.3 There is credible scientific evidence that China harbours a diverse set of Psa3 strains that are related by common descent and that have spread to many other kiwifruit growing countries around the world; and

119.5 Otherwise denies paragraph 119.

120. In respect of paragraph 120, he:

120.1 Admits that the Tracing Report states in its summary, p. 3, "the pattern and timing of spread from the sites where Psa3 was initially found also suggest that the disease arose from a single point of introduction";

120.2 Denies that the Te Matai Rd premises were the single point of introduction;

120.3 Repeats paragraphs 117 and 119 above;

120.4 Further says that scientific knowledge has evolved since the Tracing Report was published in 2011; and

120.5 Otherwise denies paragraph 120.

FIRST CAUSE OF ACTION – NEGLIGENCE

The defendant repeats paragraphs 1 to 120 and says:

Duty

121. He denies paragraph 121 and further says:

121.1 National biosecurity functions and responsibilities involve major public policy considerations, including:

121.1.1 the approach to, and performance of, obligations under relevant international instruments;

121.1.2 the balancing of the objectives of biosecurity and of international trading and transport of goods and people;

121.1.3 the allocation of central government funding;

121.1.4 the imposition of user charges; and

121.1.5 the organisation and deployment of the resources of MPI and other border regulation agencies;

121.2 The existence and application of biosecurity and other border regulation arrangements are for the benefit of the country as a whole, including the public's health and the overall economic environment;

121.3 Border regulation agencies, including MPI, are required to operate in an environment featuring great volumes of international passenger movements and imports of goods, and vast areas of expanding scientific knowledge, where MPI monitors more than 19,000 pests including evolving and emerging pests. There are many areas of

scientific uncertainty, some areas of evolving technological capacity, and necessary prioritisation of resource allocations and perceived risks;

121.4 None of the plaintiffs have any more or less reliance on biosecurity arrangements than have other participants in primary industry in New Zealand, and those directly or indirectly connected with such participants. Those arrangements are for the benefit of the New Zealand population and economy as a whole;

121.5 The imposition of private law obligations on MPI and other border regulation agencies, and their relevant personnel, would involve unlimited indeterminacy of risks;

121.6 The commercial nature of the kiwifruit industry and its ability to mitigate risk of biosecurity incursions, for example by breeding tolerant varieties such as G3, renegotiating leases, investing in scientific research and dealing with incursion responses;

121.7 Modern biosecurity legislation and international agreements recognise that there is a necessary level of "acceptable risk" of biosecurity incursions, that some level of incursion through the border is all but inevitable, and this is part of the price of participating in international trade. An important part of biosecurity regulations relate to eradication and management of incursions after they occur;

121.8 The pathway of a biosecurity incursion is usually difficult to determine (for example, the Tracing Report and Commerce Commission report stated there was insufficient evidence to determine how and where Psa3 entered New Zealand). Any duty of care which was actionable merely by a plaintiff proving the presence of a pest in New Zealand would obviate the requirement to prove causation and would be so indeterminate as to be untenable;

121.9 Similarly, once inside the border, pests may spread before the incursion is reported to MPI. The pathway by which pests (including Psa3) spread and cause damage within the New Zealand border is

difficult to determine, and will generally be outside the Crown's control;

121.10 The advice of industry bodies such as Zespri, the Industry Advisory Council and GERMAC is influential in informing prioritisation of biosecurity matters;

121.11 There is integration of agricultural industries (including the kiwifruit industry) into the operation of the biosecurity system, for example as a management agency under a National Pest Management Plan (**NPMP**);

121.12 The biosecurity system is designed to prevent biosecurity incursions to the extent reasonable, and manage incursions when they occur. The biosecurity system includes pre-border preparation, border control and post-border response. It includes operations both off-shore and on-shore, at the international and national level:

121.12.1 International plant and animal health standard development;

121.12.2 Trade and bilateral arrangements;

121.12.3 Risk assessment and import health standard development;

121.12.4 Offshore phytosanitary measures;

121.12.5 Border interventions;

121.12.6 Post-border surveillance;

121.12.7 Post-border readiness and response; and

121.12.8 Pest management;

121.13 MPI has relied and continues to rely on collaboration with the kiwifruit industry participants, regional councils and Crown entities at many stages of the biosecurity system;

121.14 When processing imported goods at the border, including when giving goods biosecurity clearance, MPI relies on the importer to

provide accurate certifications, documentation and information regarding the origin, content and nature of imported goods;

121.15 When a passenger and accompanied goods enter New Zealand through the border, MPI relies on the passenger to provide accurate documentation and information regarding his or her clothing and equipment, activities overseas and the origin, content and nature of the accompanied goods;

121.16 MPI relies on industry to accurately report biosecurity incursions without unreasonable delay (Part 4 of the Act); and

121.17 It would not be just, fair or reasonable to impose a duty of care on border regulation agencies and/or their personnel in general, nor any duty as pleaded against MPI and/or its personnel in particular.

122. He denies paragraph 122 and repeats paragraph 121 above.

123. He denies paragraph 123 and repeats paragraph 121 above.

Breach of duty

124. He denies paragraph 124 and repeats paragraphs 38 to 105 above, and further says that MPI's actions were reasonable on the basis of the then accepted scientific knowledge at all relevant times.

Causation of loss

125. He denies paragraph 125, repeats paragraph 2 above, and further says:

Pathway into New Zealand unknown

125.1 The pathway by which Psa3 entered New Zealand is not known.

125.2 Possible pathways into New Zealand include:

125.2.1 Smuggling of infected nursery stock; and

125.2.2 The movement of people and contaminated equipment between orchards in New Zealand and infected countries.

125.1 The November 2009 Alert, the Australian Plant Pathology article, the correspondence with Kent Atkinson and Plant & Food Research

and the report of Plant & Food Research's findings about pollen, all occurred after the June 2009 consignment was cleared and released to the importer;

The incursion into New Zealand

125.2 Psa subsequently spread around New Zealand through a range of pathways, including by:

125.2.1 Harvesting of infected budwood and pollen;

125.2.2 Movement of plant material from infected regions and controlled areas to uninfected regions; and

125.2.3 Movement of equipment, people and vehicles.

125.3 Some growers' pre-incursion orchard hygiene practices were poor by comparison to other horticultural industries, which made their orchards vulnerable to pests such as Psa3 and increased the impact of the incursion, as noted in the Second Sapere Report.

125.4 Post-incursion, some growers failed to adhere to proper hygiene practices, as outlined in the Second Sapere Report, leading to further spread of Psa3.

125.5 Some plaintiffs failed or refused to negotiate with KVH, or delayed negotiations, as outlined in the Second Sapere Report, thereby increasing the risk of spread to neighbouring orchards.

125.6 The immediate response to the Psa3 incursion was initially managed by MPI, including declaration of Restricted Places (including RP1 & RP2) and a Controlled Area by way of notices issued under the Act. Compensation of $2.3 million was paid to persons who suffered loss or damage for actions taken by MPI under the Act during the initial response phase of the incursion.

125.7 On 17 November 2010, Ministers with Power to Act delegated by Cabinet approved the allocation of $25 million towards a joint response to the Psa3 incursion between MPI and industry, which was matched by a $25 million contribution from industry (Zespri). The

$50 million was administered by a new joint MPI-industry body, KVH. The objectives of KVH were:

125.7.1 To manage and contain Psa3 through the Aggressive Management Assistance Package (**AMAP**);

125.7.2 To establish and manage a financial assistance package for growers who agree to take aggressive containment steps on their orchards under the AMAP; and

125.7.3 To develop a long term pest management plan for Psa.

125.8 The AMAP provided remediation and payments from the fund to orchardists who entered into a contract with KVH and complied with the Psa Orchard Management Strategy for Italian Isolate Psa. The AMAP contracts limited MPI's, KVH's and Zespri's liability towards orchardists receiving remediation and payments, and included a mechanism to resolve disputes.

125.9 KVH proposed an NPMP which was developed in consultation with growers and other industry actors. The NPMP was accepted by the defendant and given a regulatory basis through the promulgation of the Biosecurity (National Psa-V Pest Management Plan) Order 2013 (conferring Biosecurity Act powers on KVH, in its capacity as a "management agency" for Psa3) and the Biosecurity (Psa-V - Kiwifruit Levy) Order 2013 (enabling KVH to levy industry for the costs of administrating and operating the NPMP) on 13 May 2013.

125.10 Psa3 was also declared an "adverse event" and related relief was made available to the kiwifruit industry under the Social Security Act 1964 and the Income Tax Act 2007.

125.11 Any valid claims by the plaintiffs for losses incurred as a result of the Psa3 incursion into New Zealand should have been dealt with through the mechanisms above.

No loss

125.12 Further, any kiwifruit orchard affected by the actual or perceived impact of Psa3 was further enabled to avoid economic loss by the making available of the more tolerant G3 gold kiwifruit cultivar, the increase in market price, and the improved orchard management practices, and the production and profitability of any such orchard has been (or ought to have been if reasonably operated) such that, over the relevant period (2010 to date), the immediate impact of any production loss and plant replacement costs has been outweighed by improved production and profitability and no such orchard has (or would have, if reasonably operated) suffered any such loss.

Consequential economic loss

125.13 He pleads and relies on the principle that plaintiffs cannot recover consequential or remote economic loss in a private law claim for negligence.

125.14 In respect of all plaintiff classes listed in Schedule 3 of the amended statement of claim, increased financing costs are too remote and should not be recoverable.

125.15 In respect of the owner/operator plaintiffs:

125.15.1 Some of the losses claimed would not be available under the statutory compensation scheme outlined in paragraphs 135 to 137 below, or compensation from KVH through the AMAP; and

125.15.2 To the extent that any plaintiffs had the ability to lay off any economic losses by the terms of the lease arrangements and other contractual instruments, and did so, this loss should not be recoverable. The defendant is awaiting discovery of the contractual arrangements.

125.16 In respect of the lessee plaintiffs:

125.16.1 Some of the losses claimed would not be available under the statutory compensation scheme outlined in paragraphs 135

to 137 below, or compensation from KVH through the AMAP;

125.16.2 Losses for loss of rental income, decrease in orchard price and other non-grower operations are too remote and should not be recoverable; and

125.16.3 To the extent that any plaintiffs had the ability to lay off any economic losses by the terms of the lease arrangements and other contractual instruments, and did so, this loss should not be recoverable. The defendant is awaiting discovery of the contractual arrangements.

125.17 In respect of plaintiffs who sold their orchards:

125.17.1 Some of the losses claimed would not be available under the statutory compensation scheme outlined in paragraphs 135 to 137 below, or compensation from KVH through the AMAP; and

125.17.2 Generally the losses claimed in paragraphs 4 and 5 of Schedule 3 to the amended statement of claim are too remote to be recoverable.

125.18 In respect of the second plaintiff:

125.18.1 Some of the losses claimed would not be available under the statutory compensation scheme outlined in paragraphs 135 to 137 above, or compensation from KVH through the AMAP;

125.18.2 Losses for post-harvest operations and other non-grower operations are too remote and should not be recoverable;

125.18.3 The second plaintiff is able to, and did, mitigate these losses through the contractual arrangements between its post-harvest operation and its grower entity; and

125.18.4 The second plaintiff markets itself as providing the "complete grower solution" including orchard management, monitoring, harvesting, logistics, packing and cool storage, a scientific laboratory, marketing and export services.

Vicarious liability

126. He denies paragraph 126 and repeats paragraph 6 above.

SECOND CAUSE OF ACTION – NEGLIGENCE

The defendant repeats paragraphs 1 to 121 above and says:

Duty

127. He denies paragraph 127, repeats paragraph 121 above.

Breach of duty

128. He admits that anthers are not pollen, but otherwise denies paragraph 128, repeats paragraphs 38 to 105 above and further says:

128.1 Physical inspection of the June 2009 consignment was not required;

128.2 Psa3 bacteria cells are not visible to the naked eye;

128.3 At June 2009:

128.3.1 It was not known that pollen could be contaminated with or transmit live Psa cells; and

128.3.2 No effective validated test was available to determine if live or dead Psa cells were present in pollen.

Causation of loss

129. He denies paragraph 129, repeats paragraphs 2, 117 and 118, 125 and 128 above and further says:

Alleged breaches did not cause loss

129.1 The November 2009 Alert, the Australian Plant Pathology article, the correspondence with Kent Atkinson and Plant & Food Research and the report of Plant & Food Research's findings about pollen, all occurred after the June 2009 consignment was cleared and released to the importer;

Intervening events

129.2 If the June 2009 consignment contained anthers, and was declared as "pollen", , then the consignment was of unauthorised goods.

Vicarious liability

130. He denies paragraph 130 and repeats paragraph 6 above.

AND BY WAY OF AFFIRMATIVE DEFENCES

131. He repeats paragraphs 1 to 130 above and pleads, by way of affirmative defences:

First Affirmative Defence: statutory immunity

132. He pleads and relies on the immunity which an "inspector, authorised person, accredited person, or other person" are entitled to rely on under s 163 of the Act.

133. The defendant is a "person" under s 2 of the Act and is entitled to rely on the immunity in s 163.

134. In the alternative, the immunity under s 163 applies to the defendant pursuant to s 6(4) of the Crown Proceedings Act 1950, as it would have applied in relation to "inspectors, authorised person, accredited person or other person", if the proceedings against the defendant had been proceedings against one or more of those persons.

Second Affirmative Defence: statutory compensation scheme and Pest Management Plan pursuant to s 162A and Part 5 of the Biosecurity Act 1993 and AMAP

135. Any liability on the defendant to remedy losses resulting from a biosecurity incursion is covered and limited by the compensation scheme under s 162A, remedial actions and compensation available under Part 5, including the statutory arbitration and appeal mechanisms, and the operations and terms of assistance under the AMAP.

136. The Biosecurity (National Psa-V Pest Management Plan) Order 2013 (providing enforcement powers to KVH) and the Biosecurity (Psa-V - Kiwifruit Levy) Order 2013 (enabling KVH to levy industry for the costs of

administrating and operating the NPMP), were promulgated on 13 May 2013. The NPMP and levy were proposed by KVH and consulted with industry before promulgation as Orders.

137. Any valid claims by the plaintiffs for losses incurred as a result of the Psa3 incursion into New Zealand should have been dealt with through the mechanisms above.

Third Affirmative Defence: obligation to mitigate loss

138. He repeats paragraphs 125 and 135 to 137 above, and pleads and relies on the plaintiffs' obligation to verify and mitigate the loss alleged, to act reasonably and prudently in relation to orchard management practices (including hygiene practices) and commercial options and decision making. Further particulars of failures to mitigate loss will be provided after discovery in relation to these matters.

Fourth Affirmative Defence: contributory negligence

139. He pleads and relies on the principles of contributory negligence which require the plaintiffs to act reasonably and prudently in relation to orchard management practices (including hygiene practices) and commercial options and decision making. Further particulars of contributory negligence will be provided after discovery in relation to these matters.

This document is filed by Sally Virginia McKechnie, solicitor for the defendant, of Crown Law.

The address for service of the defendant is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the defendant may be left at this address for service or may be:

(a) posted to the solicitor at PO Box 2858, Wellington 6140; or

(b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or

(c) transmitted to the solicitor by facsimile to 04 473 3482; or

(d) emailed to the solicitor at sally.mckechnie@crownlaw.govt.nz

Schedule 1

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
2007031028	Kiwi Pollen NZ Ltd	29 March 2007	16 April 2007 Valid for 12 months, multiple consignments	New	Bexley Inc, China	Only hand collected, unopened male flower buds may be collected, milled and imported. Consignments must be accompanied by a government issued phytosanitary certificate stating that male flower buds were hand collected and unopened.	Permit not used
2007033015	Kiwi Pollen NZ Ltd	7 December 2007	7 December 2007 Valid for 12 months, multiple consignments	New	Chile	Only hand collected, unopened male flower buds may be collected, milled and imported. Consignments must be accompanied by a government issued phytosanitary certificate stating that male flower buds were hand collected and unopened.	Permit not used

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
2008034955	Kiwi Pollen NZ Ltd	15 August 2008	15 August 2009 Valid for 12 months, single consignment	New	Kiwi Pollen NZ Ltd, Thailand (Pollen initially from New Zealand and returned from Thailand)	Pollen is to be inspected for visible signs of contamination.	c2008/261720: Arrived 13 September 2008
2008035594	Kiwi Pollen NZ Ltd	3 November 2008	3 November 2008 Valid for 12 months, multiple consignments	Renewal	Apicola Martinez SRL, Chile	1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import. 2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional	c2008/352699: Arrived 14 December 2008 and released 20 January 2009 Phytosanitary report: 2.5kg of pollen Biosecurity clearance: 12.965kg of pollen

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
						Declaration: "The male flower buds were hand collected and unopened."	c2009/67312 Arrived and released 28 March 2009 Phytosanitary report: 26kg of pollen Air Waybill: 50.6kg of fruit pollen Biosecurity clearance: 4 units (50.600kg) pollen, frozen kiwifruit pollen
2009036858	Kiwi Pollen NZ Ltd	29 April 2009	30 April 2009 Valid for 12 months, multiple consignments	Renewal	Bexley Incorporated, China	1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import. 2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	c2009/140782: Arrived 24 June 2009 and released 30 June 2009 Phytosanitary report: 4.5kg of kiwi pollen Air Waybill: 11kg of kiwi pollen Biosecurity clearance: 1 unit other nursery stock, Actinidia, deliciosa
2009036865	Kiwi Pollen NZ Ltd	29 April 2009	30 April 2009 Valid until 3 November 2009, multiple consignments	Renewal	Apicola Martinez SRL, Chile	1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import. 2. All consignments must be accompanied by a phytosanitary certificate issued by the National	Permit not used

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
						Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
2009038537	Kiwi Pollen NZ Ltd	3 November 2009	9 November 2009[1] Valid for 12 months, multiple consignments	Renewal	Apicola Martinez SRL, Chile	1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import. 2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	c2009/296408: Arrived 28 November 2009 and released 1 December 2009 Phytosanitary report: 99kg of pollen Air Waybill: 221.2kg of fruit pollen Biosecurity clearance: 11 units of nursery stock, Actinidia deliciosa. c2010/113285: Arrived 30 April 2010 and released 3 May 2010 Phytosanitary report: 21kg of Actinidia deliciosa. Air Waybill: 54.4kg of fruit pollen Biosecurity clearance: 3 units of nursery stock, Actinidia deliciosa

[1] Mistakenly recorded on the Permit to Import Nursery Stock as 9 October 2009.

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
2010039375	Plant & Food Research		5 March 2010 Valid for 12 months, multiple consignments		Various: Italy, Japan, Korean and China	1. All samples must be labelled. On arrival to New Zealand all documents associated with the consignment will be inspected by a MAFBNZ inspector. 2. The samples are to be consigned in secure packaging. 3. The samples are to be stored and used at the transitional facility in accordance with a quality system approved by the inspector of the listed transitional facility, and must not leave the facility. 4. The samples are not to be removed or distributed to any person in NZ or used for other purposes without further authorisation from the facility inspector. 5. Any material remaining after analysis is to be incinerated/autoclaved for disposal. 6. A record is to be kept by the importer of all samples introduced under this permit (including scientific name/description, country of origin, date of arrival) and the current status of the material (i.e. held/in use/destroyed). This	c2010/126141 Released 13 May 2010 Biosecurity clearance: 3 vials of kiwifruit pollen c2010/229343 Released 23 August 2010 Biosecurity clearance: 1 unit kiwifruit pollen – hand collected c2010/272317 Arrived and released 19 September 2010 Biosecurity clearance: 4 vials kiwifruit pollen

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
						record is to be made available to a MAFBNZ inspector at all reasonable times. 7. If any conditions of this permit to import cannot be or are not complied with the importer may be required by a MAFBNZ inspector to reship or destroy the plant material.	
20100039663	Plant & Food Research	14 April 2010	15 April 2010 Valid 12 months, multiple consignments		Various, Italy	1. All samples must be labelled. On arrival to New Zealand all documents associated with the consignment will be inspected by a MAFBNZ inspector. 2. The samples are to be consigned in secure packaging. 3. The samples are to be stored and used at the transitional facility in accordance with a quality system approved by the inspector of the listed transitional facility, and must not leave the facility. 4. The samples are not to be removed or distributed to any person in NZ or used for other purposes without further authorisation from the facility inspector. 5. Any material remaining after analysis is to be incinerated/autoclaved for	c2010/114074 Arrived and released 1 May 2010 Biosecurity clearance: 39 units Hort 16A [Kiwifruit] pollen samples

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
						disposal. 6. A record is to be kept by the importer of all samples introduced under this permit (including scientific name/description, country of origin, date of arrival) and the current status of the material (i.e. held/in use/destroyed). This record is to be made available to a MAFBNZ inspector at all reasonable times. 7. If any conditions of this permit to import cannot be or are not complied with the importer may be required by a MAFBNZ inspector to reship or destroy the plant material.	
2010040083	Kiwi Pollen NZ Ltd	8 June 2010	9 June 2010 Valid 12 months, multiple consignments	Renewal	Bexley Incorporated, China	1. Unopened male flower buds must be hand collected. The pollen may be milled prior to import. 2. All consignments must be accompanied by a phytosanitary certificate issued by the National Plant Protection Organisation of the exporting country with the following Additional Declaration: "The male flower buds were hand collected and unopened."	c2010/161762: Arrived 6 June 2010 and released 18 June 2010 Phytosanitary report: -1kg of kiwi pollen Biosecurity clearance: 1 unit of nursery stock actinidia deliciosa

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
2011042606	Plant & Food Research		12 May 2011 Valid 12 months, multiple consignments		Various: Italy, Japan, Korea and China	1. All samples must be labelled. On arrival to New Zealand all documents associated with the consignment will be inspected by a MAFBNZ inspector. 2. The samples are to be consigned in secure packaging. 3. The samples are to be stored and used at the transitional facility in accordance with a quality system approved by the inspector of the listed transitional facility, and must not leave the facility. 4. The samples are not to be removed or distributed to any person in NZ or used for other purposes without further authorisation from the facility inspector. 5. Any material remaining after analysis is to be incinerated/autoclaved for disposal. 6. A record is to be kept by the importer of all samples introduced under this permit (including scientific name/description, country of origin, date of arrival) and the current status of the material (i.e. held/in use/destroyed). This	c2011/156137 Released 13 June 2011 Biosecurity clearance: 1 unit of kiwifruit pollen c2011/218657 Arrived and released 23 July 2011 Biosecurity clearance: 3 units, 2 packets and 1 vial kiwifruit pollen from Italy

Permit Number	Importer (listed on permit)	Date application submitted	Date application approved	New / renewed permit	Exported from	Permit Special Conditions	Consignment number
						record is to be made available to a MAFBNZ inspector at all reasonable times. 7. If any conditions of this permit to import cannot be or are not complied with the importer may be required by a MAFBNZ inspector to reship or destroy the plant material.	