

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: NSD580/2018
File Title: RAFFAELE WEBB v GETSWIFT LTD ACN 604 611 556 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 7/02/2019 3:20:53 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



AMENDED DEFENCE

No. NSD580 of 2018

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

RAFFAELE WEBB

Applicant

GETSWIFT LIMITED (ACN 604 611 556)

First Respondent

JOEL MACDONALD

Second Respondent

Preliminary

- A. Headings used in this Amended Defence are for convenience only. They do not form part of the Respondents' Amended Defence.
- B. Unless the context otherwise requires, the Respondents adopt the defined terms in the Applicant's Amended Statement of Claim filed on ~~4 June 2018~~ 14 January 2019 (SOC), but do not admit any factual assertions contained in, or in any way implied by, any defined term used in the SOC.
- C. In accordance with principle and usual practice, the Respondents have not pled to the particulars in the SOC. Nothing in this Defence should be taken to be an admission of any fact alleged in the particulars to the SOC.
- D. This Defence responds to the SOC on behalf of the First Respondent (**GetSwift**) and the Second Respondent (**Mr Macdonald**).

In response to the SOC, the Respondents:

A. PARTIES

1. In response to paragraph 1:

08184-00001/10655974.4

Filed on behalf of (name & role of party) GetSwift Limited and Joel Macdonald, the Respondents

Prepared by (name of person/lawyer) Michelle Fox; Michael Mills

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(include state and postcode)

- (a) admit that the Applicant has purported to commence the proceedings as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth); and
 - (b) otherwise, do not know and cannot admit the paragraph.
2. In response to paragraph 2:
- (a) deny that the Applicant or any Group Member suffered loss and damage by or resulting from the alleged contravening conduct of the Respondents as described in the SOC; and
 - (b) otherwise, do not know and cannot admit the paragraph.
3. Do not know and cannot admit paragraph 3.
4. Admit paragraph 4.
5. In response to paragraph 5:
- (a) will rely upon the full terms and effect of the Corporations Act and the Listing Rules published by the ASX (**ASX Listing Rules**); and
 - (b) otherwise, admit the paragraph.
6. Admit paragraph 6.
- B. GETSWIFT'S BUSINESS AND CORPORATE GOVERNANCE**
7. In response to paragraph 7:
- (a) admits the paragraph; and
 - (b) say further that at all material times, GetSwift operated a global Software as a Service (**SaaS**) platform (**GetSwift Platform**), which was a delivery logistics based platform for the primary purpose of managing last mile delivery services. The GetSwift Platform was provided to clients as either a white label solution or deployed to a dedicated client environment. The platform could be used to effect last mile delivery service either through a client's own driver network or with contracted services.;~~and~~

~~otherwise, deny the paragraph.~~
8. In response to paragraph 8:
- (a) say that the business and fee structure model of GetSwift is, and at all material times was, a matter of public record as follows: the Prospectus issued by

GetSwift and lodged with the ASX on 7 December 2016 (**Prospectus**) states that:

- (i) “GetSwift offers a white labelled, enabling technology to companies for a low, pay as you use, transaction based fee” (p28);
- (ii) “Revenue is generated on a per delivery basis using a transaction fee of up to \$0.29 per delivery. Discounts are applied to larger clients using a tiered fee structure, based on the client’s monthly transactional volume and the length of contract commitment. No fixed maintenance or upfront set-up fees apply. Additional fixed subscription fees are payable on a per delivery driver basis for fleet management and smart routing. SMS charges are on-charged as status updates are sent via SMS to the client’s end customer” (p28);
- (iii) “GetSwift is focused on two main client segments: 1. National and Multinational Enterprise Clients; and 2. Small and Medium Enterprise Self-Serve Clients” (p28);
- (iv) “Self-serve clients are generally small-to-medium businesses (**SMEs**). Sales to these clients is largely via online methods such as digital advertising as well as word of mouth. Self-serve clients initially sign up for a two-week trial and are provided free access to the system on a proof-of-concept (**POC**) basis which can be effected immediately. After the POC stage, these clients convert and pay a fee per transaction. Their bank details are uploaded to the platform and an upfront amount deposited which is deducted/drawn down during usage. Back end support for these clients is online based and live chat is available to support these clients as required.” (p28);
- (v) “Enterprise clients are larger organizations with multi-site requirements and trading volumes of greater than 10,000 deliveries per month. The sales cycle is more interactive with these clients and requires a GetSwift sales person to onboard and monitor. Typically, a 90-day POC trial is granted and the client then moves to a standard contract.” (p28);
- (vi) “Contracts for enterprise clients are initially two years in length. Bespoke solutions are also available to enterprise clients and these are assessed and priced individually based on the complexity of the requirement. GetSwift’s enterprise clients who have entered into POC have a 100% sign up rate to contracts as at the date of this Prospectus.” (p28);
- (vii) “the sales cycles for both self-serve and enterprise sales channels are dependent on the clients size and volume of transactions. An enterprise

client must have trading volumes of 10,000 deliveries per month and a multi-site requirement.” (p28);

- (viii) An identified risk involved in investing in GetSwift was that “[e]ven once clients are successfully attracted to the GetSwift platform and related services, clients may terminate their relationship with the Company at any time. If a number of clients were to terminate their arrangements with the Company as permitted under the terms of the agreement with such clients, this may have an adverse impact on the Company’s business, financial position, results of operations, cash flows and prospects” (p43);
- (b) the ASX announcement issued by GetSwift on 30 January 2017 entitled “Appendix 4C & Quarterly Review” stated the following: “GetSwift generates revenue by charging a fee for every delivery that is optimised and managed on the GetSwift platform. Naturally as delivery transactional volume increases a subsequent increase in revenue will follow” (p2);
- (c) the ASX announcement issued by GetSwift on 9 May 2017 entitled “GetSwift Investor Presentation”, stated the following:
 - (i) under the section entitled “SAAS Revenue Model”, “Variable transaction fee payable per task/delivery (tiered based on volume)” (p8);
 - (ii) under the section entitled “Client Segmentation”:
 - (1) “SME: Regional businesses with transactions typically under 10,000 per month; web-based self serve; pay as you go (credit top up system); very low overhead to GetSwift; consistent organic growth” (p15);
 - (2) “Enterprise: Multi-regional businesses with transactions typically over 10,000 per month; dedicated fulfilment activity; POC 60-90 day trial; contracted services typically 2-3 years; rapid scale” (p15);
- (d) the 25 January 2018 GetSwift issued an ASX Announcement entitled “Response to ASX letter regarding GetSwift Ltd (GSW): aware query” (**25 January 2018 Announcement**) which stated the following:
 - (i) “POC periods were not disclosed for any contracts because GSW does not believe any of the POC period provisions to be material conditions to the contracts, as it will typically have no bearing on the commercial relationship in terms of any ability of the clients to cease using the GSW platform. Regardless of any POC period, because the contracts are pay as you go; clients that no longer want to use the platform simply cease

using it and this is then reflected in our periodic reporting of delivery transactions and revenue.”

(e) the ASX Announcement issued by GetSwift on 9 February 2018 entitled “Response to ASX Query” stated the following:

- (i) “The GetSwift business is a pay-as-you-go model based upon “Software as a Service (SaaS)” as described in the GetSwift IPO prospectus. The GetSwift pay-as-you-go business model has also been disclosed in our periodic reporting, investor communications, customer communications, and on our website”;
- (ii) “GetSwift did not consider including the qualification that Fruit Box could cease using the platform at any time because that is self-evident of a pay-as-you-go business model. Equally, because it is a pay-as-you-go model the termination right also wasn’t considered material”;
- (iii) “As stated in GetSwift’s IPO prospectus and website, GetSwift’s pay-as-you-go business model may have clients engaging over multiple periods of time based upon their own business needs. It is not unusual for this type of activity in a SaaS business model. Of all GetSwift’s enterprise clients, GetSwift’s retention rate is above 90%.

In GetSwift’s experience with its clients, from time to time clients pause (or cease) using the platform. GetSwift is unaware whether any clients have ceased using the platform as against just pausing. However, All Purpose Transport, CITO Transport and Crosstown Doughnuts are not presently using the platform. GetSwift is unaware whether this is temporary or permanent”;

(f) the ASX announcement issued by GetSwift on 9 February 2018 entitled “Market Update” stated the following:

- (i) “GetSwift offers its technology to companies for a per-delivery fee. Designed for ultimate scalability, GetSwift’s client agreements set no minimum spend, and can be paused and / or restarted at any time, without penalty. This is typical of SaaS companies. Clients can use the platform to effect last mile delivery either through their own driver network or with contracted services”;
- (ii) “Revenue is generated via delivery transaction fees of up to USD \$0.29 per delivery. Larger clients use a tiered fee structure, based on transactional volume, the length of contract commitment and geography. No fixed maintenance or upfront set-up fees apply”;

- (iii) “GetSwift is focused on two main client segments: 1. National and multinational enterprise clients (Enterprise Clients); and 2. Internet based self-serve clients (Self-serve Clients)”;
 - (iv) “Enterprise Clients are larger organisations with multi-site requirements and monthly volumes of over 10,000 deliveries. ... Typically, contracts for Enterprise Clients are initially two years in length, with initial periods of testing and integration. These agreements are attractive to clients due to their specific levels of customisation, and the unique aspect of GetSwift’s technology means that client usage normally is expected to increase once implemented”;
 - (v) “Separately, GetSwift’s Self-serve Clients are small-to-medium businesses who sign up to the GetSwift platform and are typically supported online”;
 - (vi) “Depending on a client’s existing technology eco-system, testing and analysis is required before achieving full integration of GetSwift’s technology. Even when a client is actively using the GetSwift Platform, that usage can be paused, scaled up or down, at any time, with corresponding impacts on revenue”;
 - (vii) “When GetSwift enters into agreements it works with the clients to understand the potential volumes of transactions that may utilise the GetSwift platform assuming successful testing and full integration and use for the life of the agreement. Ultimately whether or not this occurs is a matter for the client”;
- (g) the 19 February 2018 ASX Announcement issued by GetSwift entitled “Market Update” on 19 February 2018 (**19 February 2018 Announcement**) stated that:
- (i) “GetSwift is focused on two main client segments: 1. National and multinational enterprise clients (Enterprise Clients); and 2. Internet based self-serve clients (Self-serve Clients)”;
 - (ii) “Enterprise clients are larger organisations with multi-site requirements and monthly potential volumes of over 10,000 deliveries. ... Typically, contracts for Enterprise Clients are initially two years in length, with initial periods of testing and integration. These agreements are attractive to clients due to their specific levels of customisation, and the unique aspect of GetSwift’s technology means that client usage normally is expected to increase once implemented”;
 - (iii) “Almost 50% of GetSwift’s Enterprise Client contracts have progressed through to early stages of the revenue generation phase. These are primarily comprised of earlier Enterprise Client contracts. Other than as

previously disclosed, the majority of announced Enterprise Client contracts continue to progress through various pre-revenue generation phases”;

- (iv) “Depending on a client’s existing technology ecosystem, testing and analysis is required before achieving full integration of GetSwift’s technology”;
- (v) “GetSwift’s will continue to assess on a case by case basis whether any other contracts moving to revenue generation phase (or their termination) require disclosure to market”; and

(h) otherwise, admits the paragraph.

9. In response to paragraph 9:

- (a) say that the responsibilities of the Board and the Executive Director were set out in GetSwift’s Board Charter (**Board Charter**), which was referred to in GetSwift’s Prospectus;

Particulars

Prospectus, p55.

- (b) rely upon the provisions of the Board Charter for their full force and effect;
- (c) say further that Mr Macdonald was an Executive Director of GetSwift at all material times; and
- (d) otherwise, deny the paragraph.

C. FRUIT BOX GROUP CONTRAVENTIONS

I Fruit Box Group Misleading Conduct

10. Admit paragraph 10.

11. In response to paragraph 11:

- (a) say that the Fruit Box Group Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “The Fruit Box Group previously known as Box Corporate signs up to an exclusive 3 year contract with GetSwift’s last-mile delivery services solution to optimise and manage the fruit box and milk deliveries across Australia”;

- (ii) “Fruit Box Group currently delivers more than 1,500,000+ fruit boxes and milk deliveries per year with significant growth projections in place”;
 - (iii) “Exclusive contract projected at more than 7,000,000+ total aggregate deliveries”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus;
 - (c) say further that the statements made by GetSwift concerning its expectation for its delivery projections were, and could only reasonably be construed to be, statements of GetSwift’s opinion of future performance at the time of the Fruit Box Group Announcement; and
 - (d) otherwise, deny the paragraph.
12. In response to paragraph 12:
- (a) refer to and repeat paragraph 11 herein;
 - (b) if (which is denied) the Fruit Box Group Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
13. In response to paragraph 13:
- (a) refer to and repeat paragraphs 11 and 13 herein; and
 - (b) otherwise, deny the paragraph.
- 13A. In response to paragraph 13A:
- (a) say that the Fruit Box Contract, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) at clause 3:

“Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

 - Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and

- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Australia. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift's provision of the Services."

(ii) at clause 4:

"36 months (comprised of a limited roll out plus the initial term), as follows:

- **Limited Roll Out** – Minimum of 10 drivers. Expires April 1st, 2017
- **Initial Term** – 36 months (following the limited roll out – we would suggest 36 months to sync with pricing guarantee); Initial Term to start no later than 1st April 2017 to 1st of April 2020 – at least 7 days prior to the expiration of the Limited roll out period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the limited roll out period. If no notice in writing is issued to GetSwift then the initial term will automatically commence on April 1st 2017.
- Client has option to renew for an additional 24 months after initial 36 month term expires. Original price as per tier below plus AUD\$0.01 per delivery to be applied. If client does more than 200,000 deliveries per month, then no fee increase will apply for any contract extension."

(b) otherwise, deny the paragraph.

14. In response to paragraph 14:

- refer to and repeat paragraphs 8, ~~and 11~~ and 13A herein;
- say that the Fruit Box Contract included a limited roll out period for the use of the GetSwift Platform;
- rely upon the terms of the Fruit Box Contract for their full force and effect; and
- otherwise, deny the paragraph.

15. Deny paragraph 15.

II Fruit Box Group False Statements Conduct

16. In response to paragraph 16:
- (a) refer to and repeat paragraphs 11 and 14 herein; and
 - (b) otherwise, deny the paragraph.
17. In response to paragraph 17:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
18. In response to paragraph 18:
- (a) refer to and repeat paragraphs 11 and 14 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.
19. Deny paragraph 19.

III Fruit Box Group Macdonald Misleading Conduct

20. In response to paragraph 20:
- (a) refer to and repeat paragraphs 9 and 11 herein;
 - (b) say that the Fruit Box Group Announcement was issued by GetSwift to the ASX for release by GetSwift; and
 - (c) otherwise, deny the paragraph.
21. In response to paragraph 21:
- (a) refer to and repeat paragraph 20 herein;
 - (b) if (which is denied) the Fruit Box Group Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
22. In response to paragraph 22:
- (a) refer to and repeat paragraphs 20 and 22 herein; and
 - (b) otherwise, deny the paragraph.

23. In response to paragraph 23:
- (a) refer to and repeat paragraph 20 herein; and
 - (b) otherwise, deny the paragraph.

24. Deny paragraph 24.

IV Fruit Box Group Macdonald False Statements Conduct

25. In response to paragraph 25:
- (a) refer to and repeat paragraph 14 herein; and
 - (b) otherwise, deny the paragraph.

26. In response to paragraph 26:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.

27. In response to paragraph 27:
- (a) refer to and repeat paragraphs 11 and 14 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.

28. Deny paragraph 28.

V Fruit Box Disclosure Contravention

29. In response to paragraph 29:
- (a) admit that Fruit Box Group sought a release from the Fruit Box Contract on or ~~about~~ 20 March 2017 and advised GetSwift of that termination; and
 - (b) otherwise, deny the paragraph.

30. In response to paragraph 30:
- ~~say that the Respondents were aware as at 24 February 2017 that the Fruit Box Contract was subject to a limited roll out period;~~
- (a) refer to and repeat paragraphs 7, 8, 11, 14 and 29 herein;
 - (b) otherwise, deny the paragraph.

31. In response to paragraph 31:
- (a) refer to and repeat paragraphs 9, 11, 29 and 30 herein; and
 - (b) otherwise, deny the paragraph.
32. In response to paragraph 32:
- (a) refer to and repeat paragraphs 29 to 31 herein;
 - (b) say, further or alternatively, that if it is found that the Fruit Box Information and each individual item of the Fruit Box Information existed at the start of each of the relevant dates pleaded by the Applicant in paragraph 30 and that the Respondents were aware of it then as at the relevant dates pleaded by the Applicant and at all material times thereafter for the purposes of ASX Listing Rule 3.1A:
 - (i) the information comprised matters of supposition or was sufficiently indefinite to warrant disclosure;
 - (ii) the information was confidential; and
 - (iii) a reasonable person would not expect the information to be disclosed;
 - (c) say, further or alternatively, that:
 - (i) the information referred to in paragraph 30(a) was information that was generally available;

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Refer to and repeat paragraphs 7 and 8 herein.

- (ii) the Fruit Box Information was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price or value of GetSwift's securities; and
- (d) otherwise, deny the paragraph.
33. In response to paragraph 33:
- (a) refer to and repeat paragraphs 5 and 32 herein; and
 - (b) otherwise, deny the paragraph.
34. In response to paragraph 34:
- (a) refer to and repeat paragraphs 29 to 33 herein;

- (b) admit that GetSwift did not notify the ASX of the Fruit Box Information during the Claim Period; and
 - (c) otherwise, deny the paragraph.
35. Deny paragraph 35.
36. In response to paragraph 36:
- (a) refer to and repeat paragraphs 30 to 35 herein; and
 - (b) otherwise, deny the paragraph.
37. In response to paragraph 37:
- (a) say that the allegation of involvement is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.

D. APRIL 2017 CBA CONTRAVENTIONS

I April 2017 CBA Misleading Conduct

38. Admit paragraph 38.
39. In response to paragraph 39:
- (a) say that the April 2017 CBA Announcement, which will be relied upon for its full terms, meaning and effect stated that;
 - (i) GetSwift had “signed an exclusive multiyear partnership with Australia’s leading financial institution Commonwealth Bank”;
 - (ii) “Commonwealth Bank of Australia has partnered with GetSwift to offer retail merchants the ability to compete with their global counterparts when it comes to deliveries and logistics”;
 - (iii) “The exclusive partnership will allow CBA’s retail merchants to access an affordable best in class logistics platform to continue to improve their customer experience in distributing their goods”;
 - (iv) “Initially, it will benefit merchants and consumers in two ways: 1) It will turn every Albert POS vendor into a delivery-ready store-automatically queueing, batching, routing and dispatching the delivery of any good purchased using an Albert POS. This process will be seamlessly managed by the terminal, and the delivery will be outsourced to either existing logistics companies on the GetSwift network, or the merchant’s

inhouse delivery team. 2) By arming delivery drivers on GetSwift's network with an Albert platform POS terminal/and associated devices, it will now allow for consumer to pay for goods on arrival as opposed to paying for them ahead of time, incentivising better delivery processes and reduced wait time";

(v) "GetSwift estimates the deal will result in over 257,400,000 deliveries on its platform over the next five years, with an estimated aggregate transaction value of \$9 billion";

(vi) "CBA will work with GetSwift to develop new and innovative solutions through the Albert terminal and other devices, where a payments terminal can even be a GPS tracker of the goods. Rollouts will commence shortly to selected markets with a full national deployment expected to be in place in 2017";

(b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus;

(c) say further that the statements made by GetSwift concerning its expectation for its delivery projections were, and could only reasonably be construed to be, statements of GetSwift's opinion of future performance at the time of the April 2017 CBA Announcement;

(d) say further that the aggregate transaction value of \$9 billion is the aggregate of the value of the goods delivered using the GetSwift Platform; and

(e) otherwise, deny the paragraph.

40. In response to paragraph 40:

(a) refer to and repeat paragraph 39 herein;

(b) if (which is denied) the April 2017 CBA Announcement Representations were made, admit that the representations were made in relation to a financial product (being GetSwift shares); and

(c) otherwise, deny the paragraph.

41. In response to paragraph 41:

(a) refer to and repeat paragraphs 39 and 40 herein; and

(b) otherwise, deny the paragraph.

41A. In response to paragraph 41A:

- (a) say that the CBA Contract, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) at clause 1.1:
- “Project is defined in the Background.”
- (ii) at paragraph C of the Background:
- “CommBank and GetSwift have agreed to work in partnership with the aim of providing the Getswift App with which customers are able to optimize dispatch, route, keep track of their deliveries to end customers, on any Albert device and other platforms (**Project**). The Project will leverage technology and know-how from the Pi Programme and Getswift software development.”
- (iii) at clause 1.1:
- “Project Plan mean the plan for execution of the Project, as attached to this Agreement and as amended from time to time according to the process in clause 3.1(g).”
- (iv) at clause 1.1:
- “Getswift App means the application developed by Getswift on the Pi Programme ecosystem for the Project.”
- (v) at clause 2:
- “This Agreement will commence on the Commencement Date and will end on the date being the earlier of:
- (a) the termination by either party in accordance with this Agreement; and
- (b) 2 years from the Commencement Date.”
- (vi) at clause 1.1:
- “Commencement Date means the day on which the signing of this Agreement by both parties has been completed.”
- (vii) at clause 3.1(a):
- “Getswift must perform the Services contemplated by the Project Plan.”
- (viii) at clause 3.1(b):
- “The Services will include:

i. the creation and supply of the Deliverables;

ii. the development (including testing) of the Getswift App;

iii. the submission of the Getswift App for review by CommBank for purposes of inclusion of such Getswift App in the Commbank Pi Programme;

iv. the correction of any defects or issues following the technical and security reviews.”

(ix) at clause 3.1(e):

“CommBank agrees that it will cooperate and collaborate with Getswift to promote the Getswift App to the end clients of CommBank. Any such promotion activity must be agreed between the parties and documented in the Project Plan. The Project Plan will also include a plan for providing, during the Exclusivity Period, a reference that specifies Getswift as the sole provider of last mile logistics services for the Pi Programme. The Project Plan will also include a strategy for ensuring the CommBank sales, marketing and business development teams are enabled to use best reasonable efforts to promote the Getswift App, both online and via non-online efforts, with a particular focus on market verticals that are relevant for the Getswift App services.”

(x) at clause 3.2:

“The performance of the Services (and suitability of the Deliverables) are subject to approval by CommBank. If CommBank, acting reasonably at all times, is of the view that there are any deficiencies in the performance of the Services or defects in the Deliverables, then CommBank must promptly notify Getswift and Getswift will correct any such deficiencies:

(a) within a timeframe that allows Milestones to be achieved and the Project Plan to be met; or

(b) otherwise as agreed by the parties.

(b) otherwise, deny the paragraph.

42. In response to paragraph 42:

(a) refer to and repeat paragraph 39 and 41A herein;

(b) rely upon the terms of the CBA Contract for their full force and effect;

(c) admit that no Project Plan was attached to the CBA Contract;

- (d) say that the Project Plan was not agreed in full during the Relevant Period;
- (e) say that the Represented Albert POS Logistics Solution was not rolled out on a commercial basis during the Relevant Period; and
- (f) otherwise, deny the paragraph.

43. Deny paragraph 43.

II April 2017 CBA False Statements Conduct

44. In response to paragraph 44:

- (a) refer to and repeat paragraphs 39 and 42 herein; and
- (b) otherwise, deny the paragraph.

45. In response to paragraph 45:

- (a) say the paragraph is embarrassing and liable to be struck out;
- (b) otherwise, deny the paragraph.

46. In response to paragraph 46:

- (a) refer to and repeat paragraphs 39 and 42 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

47. Deny paragraph 47.

III April 2017 CBA Macdonald Misleading Conduct

48. In response to paragraph 48:

- (a) refer to and repeat paragraphs 9 and 39 herein;
- (b) say that the April 2017 CBA Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

49. In response to paragraph 49:

- (a) refer to and repeat paragraph 48 herein;

- (b) if (which is denied) the April 2017 CBA Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift shares); and
- (c) otherwise, deny the paragraph.

50. In response to paragraph 50:

- (a) refer to and repeat paragraphs 48 and 50 herein; and
- (b) otherwise, deny the paragraph.

51. In response to paragraph 51:

- (a) refer to and repeat paragraph 48 herein; and
- (b) otherwise, deny the paragraph.

52. Deny paragraph 52.

IV April 2017 CBA Macdonald False Statements Conduct

53. In response to paragraph 53:

- (a) refer to and repeat paragraphs 39 and 48 herein; and
- (b) otherwise, deny the paragraph.

54. In response to paragraph 54:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

55. In response to paragraph 55:

- (a) refer to and repeat paragraphs 39 and 48 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

56. Deny paragraph 56.

E. LONE STAR GRILL CONTRAVENTIONS

I Lone Star Grill Misleading Conduct

57. Admit paragraph 57.

58. In response to paragraph 58:

- (a) say that the Lone Star Grill Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “Multi-year agreement to provide the GetSwift last mile delivery and logistics solution to LoneStar Texas Grill in Canada”;
 - (ii) “GetSwift...is pleased to announce that it has signed an exclusive multiyear partnership with ... LoneStar Texas Grill”;
 - (iii) “The LoneStar Texas Grill in the Canada has partnered with GetSwift to offer its Canadian operations the ability to manage their last mile delivery and logistics operation”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

59. In response to paragraph 59:

- (a) refer to and repeat paragraph 58 herein;
- (b) if (which is denied) the Lone Star Grill Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

60. In response to paragraph 60:

- (a) refer to and repeat paragraphs 58 and 59 herein; and
- (b) otherwise, deny the paragraph.

60A In response to paragraph 60A:

- (a) say that the Lone Star Grill Contract, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) at clause 3:

“Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

- Use of GetSwift's proprietary software platform to provide Client with logistics management, tracking, dispatch, routing and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Canada. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift's provision of the Services."

(iii) at clause 4:

"37 months (comprised of a free trial period and the initial term), as follows:

Free Trial Period – Trial Period to run up to one month

1 month + 36 months (comprise of a limited roll out plus the initial term), as follows:

Joint Product & Production roadmap Implementation: To start on or about April 2017

Proposed Limited Initial Roll Out:

Phase 1: 1 or 2 stores in one city;

Phase 2: Single Region with Multiple stores;

Phase 3: Multi region Multi Stores;

Phase 4: Commencement of full national rollout.

"Initial Term": 36 months pricing guarantee (following the limited roll out and no charge for platform use during initial 1 month time period). Platform use fee rates to start no later than October 1st 2017 and valid until October 1st 2020."

(c) otherwise, deny the paragraph.

61. In response to paragraph 61:

(a) refer to and repeat paragraph 58 and 60A herein;

- (b) rely upon the terms of the Lone Star Contract for their full force and effect; and
- (c) otherwise, deny the paragraph.

62. Deny paragraph 62.

II Lone Star Grill False Statements Conduct

63. In response to paragraph 63:

- (a) refer to and repeat paragraphs 58 and 61 herein; and
- (b) otherwise, deny the paragraph.

64. In response to paragraph 64:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

65. In response to paragraph 65:

- (a) refer to and repeat paragraphs 58 and 61 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

66. Deny paragraph 66.

III Lone Star Grill Macdonald Misleading Conduct

67. In response to paragraph 67:

- (a) refer to and repeat paragraphs 9 and 58 herein;
- (b) say that the Lone Star Grill Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

68. In response to paragraph 68:

- (a) refer to and repeat paragraph 67 herein;
- (b) if (which is denied) the Lone Star Grill Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift shares); and
- (c) otherwise, deny the paragraph.

69. In response to paragraph 69:
- (a) refer to and repeat paragraphs 67 and 68 herein; and
 - (b) otherwise, deny the paragraph.

70. In response to paragraph 70:
- (a) refer to and repeat paragraph 67 herein; and
 - (b) otherwise, deny the paragraph.

71. Deny paragraph 71.

IV Lone Star Grill Macdonald False Statements Conduct

72. In response to paragraph 72:
- (a) refer to and repeat paragraphs 58 and 61 herein; and
 - (b) otherwise, deny the paragraph.

73. In response to paragraph 73:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.

74. In response to paragraph 74:
- (a) refer to and repeat paragraphs 58 and 61 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.

75. Deny paragraph 75.

F. PIZZA HUT CONTRAVENTIONS

76. Admit paragraph 76.

77. In response to paragraph 77:
- (a) say that the Pizza Hut Announcement, which will be relied upon for its full terms and effect, stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed an exclusive multiyear partnership with Pizza Hut”;

- (ii) “In order to compete aggressively in this market Pizza Hut has partnered with GetSwift to offer its retail stores in Australia the ability to compete with their global counterparts when it comes to deliveries and logistics”;
- (iii) “The exclusive partnership will allow Pizza Hut the ability to use the best in class logistics platform in order to continue improving the customer experience, reduce operational inefficiencies and expand market share”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.
78. In response to paragraph 78:
- (a) refer to and repeat paragraph 77 herein;
- (b) if (which is denied) the Pizza Hut Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.
79. In response to paragraph 79:
- (a) refer to and repeat paragraphs 77 and 78 herein; and
- (b) otherwise, deny the paragraph.
- 79A. In response to paragraph 79A:
- (a) say that the Pizza Hut Contract, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) at clause 3:
- “Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:
- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
 - Consultancy advice and product development in relation to the Services in a reasonable number of meetings and working sessions mutually agreed upon

GetSwift will use commercially reasonable efforts to provide the Services within Australia. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift's provision of the Services.

(ii) at clause 4:

"12 months + option to renew at same terms 12 months + 12 months (comprised of a limited roll out plus the initial term), as follows:

- **Joint Product & Production roadmap implementation:** To start on or about May 2nd 2017
- **Proposed Limited Initial Roll Out – One city – Phase 1:** 15-25 stores; **Phase 2:** single State with Multiple stores **Phase 3:** Multi State & Multi Stores; **Phase 4:** Commencement of full national rollout.
- **Initial Term – 12 months pricing guarantee (following the limited roll out and no charge for platform use during initial 3 month time period).** Platform use fee rates to start no later than August 1st 2017 and valid until August 1st 2019. Platform use from August 2018 will be charged at the below rates.
- Client has option to renew for an additional 12 months plus another + 12 months after initial and each 12 month term expires. Original price as per tier below plus AUD\$0.02 per delivery to be applied. If client does more than 300,000 deliveries per month, then no fee increase will apply for the contract extension.

(b) otherwise, deny the paragraph.

80. In response to paragraph 80:

(a) refer to and repeat paragraphs 8~~1~~ and 77 and 79A herein;

(b) ~~reply~~-rely upon the terms of the Pizza Hut Contract for their full force and effect; and

(c) otherwise, deny the paragraph.

81. Deny paragraph 81.

II Pizza Hut False Statements Conduct

82. In response to paragraph 82:

- (a) refer to and repeat paragraphs 77 and 80 herein; and
 - (b) otherwise, deny the paragraph.
83. In response to paragraph 83:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
84. In response to paragraph 84:
- (a) refer to and repeat paragraphs 77 and 80 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.
85. Deny paragraph 85.
- III Pizza Hut Macdonald Misleading Conduct*
86. In response to paragraph ~~67~~ 86:
- (a) refer to and repeat paragraphs 9 and 77 herein;
 - (b) say that the Pizza Hut Announcement was issued by GetSwift to the ASX for release by GetSwift; and
 - (c) otherwise, deny the paragraph.
87. In response to paragraph 87:
- (a) refer to and repeat paragraph 86 herein;
 - (b) if (which is denied) the Pizza Hut Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares);and
 - (c) otherwise, deny the paragraph.
88. In response to paragraph 88:
- (a) refer to and repeat paragraphs 86 and 87 herein; and
 - (b) otherwise, deny the paragraph.
89. In response to paragraph 89:
- (a) refer to and repeat paragraph 86 herein; and

(b) otherwise, deny the paragraph.

90. Deny paragraph 90.

IV Pizza Hut Macdonald False Statements Conduct

91. In response to paragraph 91:

(a) refer to and repeat paragraphs 77 and 80 herein; and

(b) otherwise, deny the paragraph.

92. In response to paragraph 92:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

93. In response to paragraph 93:

(a) refer to and repeat paragraphs 77 and 80 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

94. Deny paragraph 94.

G. APRIL APPENDIX 4C CONTRAVENTIONS

I April Appendix 4C Misleading Conduct

95. Admit paragraph 95.

96. In response to paragraph 96:

(a) say that the April Appendix 4C Announcement, which will be relied upon for its full terms, meaning and effect, stated that:

(i) “Furthermore the company is starting to begin harvesting the markets its [sic] has prepared the groundwork over the last 18 months. Transformative and game changing partnerships are expected and will be announced only when they are secure, quantifiable and measurable. The company will not report on MOUs only on executed contracts. Even though this may represent a challenge for some clients that may wish in same [sic] cases not [sic] publicize the awarded contract, fundamentally the company will stand behind this policy of quantifiable non hype driven announcements even if it results in negative short term perceptions”;

- (b) say that the statements made in the April Appendix 4C Announcement were subject to the disclaimers and qualifications contained therein;
- (c) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (d) otherwise, deny the paragraph.

97. In response to paragraph 97:

- (a) refer to and repeat paragraph 96 herein;
- (b) if (which is denied) the April Appendix 4C Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares);and
- (c) otherwise, deny the paragraph.

98. In response to paragraph 98:

- (a) refer to and repeat paragraphs 96 and 97 herein; and
- (b) otherwise, deny the paragraph.

99. In response to paragraph 99:

- (a) refer to and repeat paragraph 96 herein;
- (b) deny paragraph 99(a);
- (c) as to paragraph 99(b):
 - (i) say that the expression “material positive effect” is so vague and general as to be embarrassing and ought to be struck out; and
 - (ii) otherwise, deny the paragraph; and
- (d) deny paragraph 99(c).

100. Deny paragraph 100.

II April Appendix 4C False Statements Conduct

101. In response to paragraph 101:

- (a) refer to and repeat paragraphs 96 and 99 herein; and
- (b) otherwise, deny the paragraph.

102. In response to paragraph 102:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.

103. In response to paragraph 103:
- (a) refer to and repeat paragraphs 96 and 99 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.

104. Deny paragraph 104.

III April Appendix 4C Macdonald Misleading Conduct

105. In response to paragraph 105:
- (a) refer to and repeat paragraphs 9 and 96 herein;
 - (b) say that the April Appendix 4C Announcement was issued by GetSwift to the ASX for release by GetSwift;
 - (c) say that the expression “material positive effect” is so vague and general as to be embarrassing and ought to be struck out; and
 - (d) otherwise, deny the paragraph.

106. In response to paragraph 106:
- (a) refer to and repeat paragraph 105 herein;
 - (b) if (which is denied) the April Appendix 4C Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.

107. In response to paragraph 107:
- (a) refer to and repeat paragraphs 105 and 106 herein; and
 - (b) otherwise, deny the paragraph.

108. In response to paragraph 108:
- (a) refer to and repeat paragraphs 99 and 105 herein; and

(b) otherwise, deny the paragraph.

109. Deny paragraph 109.

IV April Appendix 4C Macdonald False Statements Conduct

110. In response to paragraph 110:

(a) refer to and repeat paragraphs 99 and 105 herein; and

(b) otherwise, deny the paragraph.

111. In response to paragraph 111:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

112. In response to paragraph 112:

(a) refer to and repeat paragraphs 99 and 105 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

113. Deny paragraph 113.

H. ALL PURPOSE TRANSPORT CONTRAVENTIONS

I All Purpose Transport Misleading Conduct

114. Admit paragraph 114.

115. In response to paragraph 115:

(a) say that the All Purpose Transport Announcement, which will be relied upon for its full terms, meaning and effect, stated that:

(i) "GetSwift ... is pleased to announce that it has signed [sic] exclusive commercial multi-year agreement with All Purpose transport [sic]";

(b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and

(c) otherwise, deny the paragraph.

116. In response to paragraph 116:

- (a) refer to and repeat paragraph 115 herein;
- (b) if (which is denied) the All Purpose Transport Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

117. In response to paragraph 117:

- (a) refer to and repeat paragraphs 115 and 116 herein; and
- (b) otherwise, deny the paragraph.

117A. In response to paragraph 117A:

- (a) say that the All Purpose Transport Contract, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) at clause 3:

“Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Australia. Upon reasonable request, the Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift’s provision of the Services.”

- (ii) at clause 4:

“37 months (comprised of a free trial period plus the initial term), as follows:

- Free Trial Period – 1 month across a minimum of 10 drivers. Expires June 1st, 2017
- Initial Term – 36 months; Initial Term to start no later than 1st June 2017 to 1st of June 2020 – at least 7 days prior to the

expiration of the free trial period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the free trial period. If no notice in writing is issued to GetSwift then the initial term will automatically commence on June 1st 2017.”

(b) otherwise, deny the paragraph.

118. In response to paragraph 118:

(a) refer to and repeat paragraphs 8, ~~and 115~~ and 117A herein;

(b) rely upon the terms of the All Purpose Transport contract for their full force and effect; and

(c) otherwise, deny the paragraph.

119. Deny paragraph 119.

II All Purpose Transport False Statements Conduct

120. In response to paragraph 120:

(a) refer to and repeat paragraphs 115 and 118 herein; and

(b) otherwise, deny the paragraph.

121. In response to paragraph 121:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

122. In response to paragraph 122:

(a) refer to and repeat paragraphs 115 and 118 herein;

(b) say the paragraph is embarrassing and liable to be struck out ; and

(c) otherwise, deny the paragraph.

123. Deny paragraph 123.

III All Purpose Transport Macdonald Misleading Conduct

124. In response to paragraph 124:

(a) refer to and repeat paragraphs 9 and 118 herein;

- (b) say that the All Purpose Transport Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

125. In response to paragraph 125:

- (a) refer to and repeat paragraph 124 herein;
- (b) if (which is denied) the All Purpose Transport Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

126. In response to paragraph 126:

- (a) refer to and repeat paragraphs 124 and 125 herein; and
- (b) otherwise, deny the paragraph.

127. In response to paragraph 127:

- (a) refer to and repeat paragraphs 118 and 124 herein; and
- (b) otherwise, deny the paragraph.

128. Deny paragraph 128.

IV All Purpose Transport Macdonald False Statements Conduct

129. In response to paragraph 129:

- (a) refer to and repeat paragraphs 118 and 124 herein; and
- (b) otherwise, deny the paragraph.

130. In response to paragraph 130:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

131. In response to paragraph 131:

- (a) refer to and repeat paragraphs 118 and 124 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

132. Deny paragraph 132.

V All Purpose Transport Disclosure Contravention

133. Deny paragraph 133.

134. In response to paragraph 134:

- (a) refer to and repeat paragraphs 5, 7, 8, 115, 117A and 133 herein; and
- (b) otherwise, deny the paragraph.

135. In response to paragraph 135:

- (a) refer to and repeat paragraphs 5, 7, 8, 115 and 133 herein; and
- (b) otherwise, deny the paragraph.

136. In response to paragraph 136:

- (a) refer to and repeat paragraphs 133 to 135 herein;
- (b) say, further or alternatively, that if it is found that the All Purpose Transport Information and each individual item of the All Purpose Transport Information existed at the start of each of the relevant dates pleaded by the Applicant in paragraph 134 and the Respondents were aware of it then as at the relevant dates pleaded by the Applicant and at all material times thereafter for the purposes of ASX Listing Rule 3.1A:
 - (i) the information comprised matters of supposition or was sufficiently indefinite to warrant disclosure;
 - (ii) the information was confidential; and
 - (iii) a reasonable person would not expect the information to be disclosed;
- (c) say, further or alternatively, that:
 - (i) the information referred to in paragraph 30(a) was information that was generally available;

Particulars

Refer to and repeat paragraphs 7 and 8 herein.

- (ii) the All Purpose Transport Information was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price or value of GetSwift's securities;
- (d) otherwise, deny the paragraph.

137. In response to paragraph 137:
- (a) refer to and repeat paragraphs 5 and 136 herein; and
 - (b) otherwise, deny the paragraph.
138. In response to paragraph ~~137~~138:
- (a) refer to and repeat paragraphs 5, 136 and 137 herein; and
 - (b) otherwise, deny the paragraph.
139. Deny paragraph 139.
140. In response to paragraph 140:
- (a) refer to and repeat paragraphs 136 to 139 herein; and
 - (b) otherwise, deny the paragraph.
141. In response to paragraph 141:
- (a) say that the allegation of involvement is embarrassing and liable to be struck out;
and
 - (b) otherwise, deny the paragraph.

I. CITO CONTRAVENTIONS

I CITO Misleading Conduct

142. In response to paragraph 142:
- (a) say that the CITO Announcement was issued on 22 May 2017; and
 - (b) otherwise admit the paragraph.
143. In response to paragraph 143:
- (a) say that the CITO Announcement, which will be relied upon for its full terms, meaning and effect, stated that:.
 - (i) “GetSwift ... is pleased to announce that it has signed [sic] exclusive commercial multi-year agreement with Cito transport”;
 - (ii) “GetSwift has brought into its ecosystem an additional group in its expanding industry verticals – CITO Transport. This approach continues to offer additional industry vertical touchpoints for its platform”;

- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

144. In response to paragraph 144:

- (a) refer to and repeat paragraph 143 herein;
- (b) if (which is denied) the CITO Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

145. In response to paragraph 145:

- (a) refer to and repeat paragraphs 143 and 144 herein; and
- (b) otherwise, deny the paragraph.

145A. In response to paragraph 145A:

- (a) say that the CITO Contract, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) at clause 3:

“Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Australia.

Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift’s provision of the Services.

(b) admit on the face of the CITO Contract that clause 4, which comprised the term of the CITO Contract, had been struck out and initialled by Paul Calleja on behalf of CITO; and

(c) otherwise, deny the paragraph.

146. In response to paragraph 146:

(a) refer to and repeat paragraphs 8, ~~and 143~~ and 145A herein;

(b) rely upon the terms of the CITO Contract for their full force and effect; and

(c) otherwise, deny the paragraph.

147. Deny paragraph 147.

II CITO False Statements Conduct

148. In response to paragraph 148:

(a) refer to and repeat paragraphs 143 and 146 herein; and

(b) otherwise, deny the paragraph.

149. In response to paragraph 149:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

150. In response to paragraph 150:

(a) refer to and repeat paragraphs 143 and 146 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

151. Deny paragraph 151.

III CITO Macdonald Misleading Conduct

152. In response to paragraph 152:

(a) refer to and repeat paragraphs 9 and 143 of this Defence;

(b) say that the CITO Announcement was issued by GetSwift to the ASX for release by GetSwift; and

- (c) otherwise, deny the paragraph.
153. In response to paragraph 153:
- (a) refer to and repeat paragraph 152 herein;
 - (b) if (which is denied) the CITO Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
154. In response to paragraph 154:
- (a) refer to and repeat paragraphs 152 and 153 herein; and
 - (b) otherwise, deny the paragraph.
155. In response to paragraph 155:
- (a) refer to and repeat paragraphs 146 and 152 herein; and
 - (b) otherwise, deny the paragraph.
156. Deny paragraph 156.
- IV CITO Macdonald False Statements Conduct*
157. In response to paragraph 157:
- (a) refer to and repeat paragraphs 146 and 152 herein; and
 - (b) otherwise, deny the paragraph.
158. In response to paragraph 158:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
159. In response to paragraph 159:
- (a) refer to and repeat paragraphs 146 and 152 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.
160. Deny paragraph 160.

V *CITO Disclosure Contravention*

161. Deny paragraph 161.
162. In response to paragraph 162:
- (a) refer to and repeat paragraphs 5, 7, 8, 143 and 161 of this Defence;
 - (b) rely upon the terms of the CITO Contract for their full force and effect; and
 - (c) refer to and repeat paragraph 145A(b) herein; and
 - (d) otherwise, deny the paragraph.
163. In response to paragraph 163:
- (a) refer to and repeat paragraphs 9, 11, 161 and 162 herein; and
 - (b) otherwise, deny the paragraph.
164. In response to paragraph 164:
- (a) refer to and repeat paragraph 161 to 163 herein;
 - (b) say, further or alternatively, that if it is found that the CITO Information and each individual item of the CITO Information existed at the start of each of the relevant dates pleaded by the Applicant in paragraph 163 and the Respondents were aware of it then as at the relevant dates pleaded by the Applicant and at all material times thereafter for the purposes of ASX Listing Rule 3.1A:
 - (i) the information comprised matters of supposition or was sufficiently indefinite to warrant disclosure;
 - (ii) the information was confidential; and
 - (iii) a reasonable person would not expect the information to be disclosed;
 - (c) say, further or alternatively, that:
 - (i) the information referred to in paragraph 162(a) was information that was generally available;

Particulars

Refer to and repeat paragraphs 7 and 8 herein.

- (ii) the CITO Information was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price or value of GetSwift's securities; and

- (d) otherwise, deny the paragraph.
165. In response to paragraph 165:
- (a) refer to and repeat paragraphs 5 and 150 herein; and
 - (b) otherwise, deny the paragraph.
166. In response to paragraph 166:
- (a) refer to and repeat paragraphs 5, 164 and 165 herein; and
 - (b) otherwise, deny the paragraph.
167. Deny paragraph 167.
168. In response to paragraph 168:
- (a) refer to and repeat paragraphs 164 to 167 herein; and
 - (b) otherwise, deny the paragraph.
169. In response to paragraph 169:
- (a) say that the allegation of involvement is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.

J. HUNGRY HARVEST CONTRAVENTIONS

I Hungry Harvest Misleading Conduct

170. Admit paragraph 170, save that the correct reference to the title of the announcement was “Hungry Harvest and GetSwift sign exclusive partnership”.
171. In response to paragraph 171:
- (a) say that the Hungry Harvest Announcement, which will be relied upon for its full terms, meaning and effect stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed an exclusive multiyear partnership with Hungry Harvest in the USA”;
 - (ii) “Hungry Harvest has partnered with GetSwift to offer its group the ability to manage their last mile deliveries and logistics”;

- (iii) “The exclusive partnership will allow Hungry Harvest to access an affordable best in class logistics platform to dispatch, track and route customer orders in a highly complex operating environment”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.
172. In response to paragraph 172:
- (a) refer to and repeat paragraph 171 herein;
- (b) if (which is denied) the Hungry Harvest Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.
173. In response to paragraph 173:
- (a) refer to and repeat paragraphs 171 and 172 herein; and
- (b) otherwise, deny the paragraph.

173A. In response to paragraph 173A:

- (a) say that the Hungry Harvest Contract, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) at clause 3:
- “Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:
- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
 - Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within USA. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to

personnel GetSwift deems necessary for GetSwift's provision of the Services.

(ii) at clause 4:

"38 months (comprised of a trial period plus the initial term), as follows:

- Trial Period – (Includes 30 days free) Expires July 1st, 2017
- Initial Term – 36 months; Initial Term to start no later than 1st July 2017 to 1st of July 2020 – at least 7 days prior to the expiration of the trial period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the trial period. If no notice in writing is issued to GetSwift then the initial term will automatically commence on July 1st 2017."

(b) otherwise, deny the paragraph.

174. In response to paragraph 174:

- (a) refer to and repeat paragraphs 171 and 173A herein;
- (b) rely upon the terms of the Hungry Harvest Contract for their full force and effect; and
- (c) otherwise, deny the paragraph.

175. Deny paragraph 175.

II Hungry Harvest False Statements Conduct

176. In response to paragraph 176:

- (a) refer to and repeat paragraphs 171 and 174 herein; and
- (b) otherwise, deny the paragraph.

177. In response to paragraph 177:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

178. In response to paragraph 178:

- (a) refer to and repeat paragraphs 171 and 174 herein;

- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

179. Deny paragraph 179.

III Hungry Harvest Macdonald Misleading Conduct

180. In response to paragraph 180:

- (a) refer to and repeat paragraphs 9 and 174 herein;
- (b) say that the Hungry Harvest Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

181. In response to paragraph 181:

- (a) refer to and repeat paragraph 180 herein;
- (b) if (which is denied) the Hungry Harvest Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

182. In response to paragraph 182:

- (a) refer to and repeat paragraphs 180 and 181 herein; and
- (b) otherwise, deny the paragraph.

183. In response to paragraph 183:

- (a) refer to and repeat paragraphs 174 and 180 herein; and
- (b) otherwise, deny the paragraph.

184. Deny paragraph 184.

IV Hungry Harvest Macdonald False Statements Conduct

185. In response to paragraph 185:

- (a) refer to and repeat paragraphs 174 and 180 herein; and
- (b) otherwise, deny the paragraph.

186. In response to paragraph 186:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

187. In response to paragraph 187:

- (a) refer to and repeat paragraphs 174 and 180 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

188. Deny paragraph 188.

K. FRF COURIERS CONTRAVENTIONS

I FRF Couriers Misleading Conduct

189. Admit paragraph 189, save that the FRF Couriers Announcement was published and lodged with the ASX on 13 June 2017.

190. In response to paragraph 190:

- (a) say that the FRF Couriers Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) GetSwift “is pleased to announce it has signed a commercial multi-year agreements with FRF Couriers”;
 - (ii) “GetSwift has brought into its ecosystem an additional group in its expanding industry verticals – FRF Couriers (www.frf.com.au). This approach continues to offer additional industry vertical touchpoints for its platform”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

191. In response to paragraph 191:

- (a) refer to and repeat paragraph 190 herein;
- (b) if (which is denied) the FRF Couriers Representation was made, admits that the representation was made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

192. In response to paragraph 192:

- (a) refer to and repeat paragraphs 190 and 191 herein; and
- (b) otherwise, deny the paragraph.

192A. In response to paragraph 192A:

(a) say that the FRF Couriers Contract, which will be relied upon for its full terms, meaning and effect, stated that:

(i) at clause 3:

“Client engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Australia.

Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift’s provision of the Services.

(ii) at clause 4:

“37 months (comprised of a free trial period plus the initial term), as follows:

- Free Trial Period – Up to 2 months; Trial Period to run from 15th of November, 2016 to 15th of January
- Initial Term – 36 months (following the Trial Period – we would suggest 36 months in order to sync with pricing guarantee); The start of operational deployment to commence 15th of January, 2016 and initial contract expiry to be 15th of January 2019 unless either party notifies the other party in writing not less than seven (7) days prior to the end of the Trial Period of such party’s intent for this engagement to expire at the end of the Trial Period. Under

the initial term there is a minimum of 50,000 per month aggregate total delivery commitment required for duration for the contract.”

(b) otherwise, deny the paragraph.

193. In response to paragraph 193:

(a) refer to and repeat paragraphs 8, ~~and 190~~ and 192A herein;

(b) rely upon the terms of the FRF Couriers Contract for their full force and effect; and

(c) otherwise, deny the paragraph.

194. Deny paragraph 194.

II FRF Couriers False Statements Conduct

195. In response to paragraph 195:

(a) refer to and repeat paragraphs 190 and 193 herein; and

(b) otherwise, deny the paragraph.

196. In response to paragraph 196:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

197. In response to paragraph 197:

(a) refer to and repeat paragraphs 190 and 193 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

198. Deny paragraph 198.

III FRF Couriers Macdonald Misleading Conduct

199. In response to paragraph 199:

(a) refer to and repeat paragraphs 9 and 190 herein;

(b) say that the FRF Couriers Announcement was issued by GetSwift to the ASX for release by GetSwift; and

(c) otherwise, deny the paragraph.

200. In response to paragraph 200:
- (a) refer to and repeat paragraph 199 herein;
 - (b) if (which is denied) the FRF Couriers Macdonald Representation was made, admits that the representation was made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
201. In response to paragraph 201:
- (a) refer to and repeat paragraph 199 herein; and
 - (b) otherwise, deny the paragraph.
202. In response to paragraph 202:
- (a) refer to and repeat paragraph 199 herein; and
 - (b) otherwise, deny the paragraph.
203. Deny paragraph 203.
- IV FRF Couriers Macdonald False Statements Conduct*
204. In response to paragraph 204:
- (a) refer to and repeat paragraphs 190 and 199 herein; and
 - (b) otherwise, deny the paragraph.
205. In response to paragraph 205:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
206. In response to paragraph 206:
- (a) refer to and repeat paragraphs 190 and 199 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.
207. Deny paragraph 207.

L. TRANCHE 1 CLEANSING NOTICE CONTRAVENTIONS

I Tranche 1 Cleansing Notice Misleading Conduct

208. Admit paragraph 208.

209. In response to paragraph 209:

- (a) say that the Tranche 1 Cleansing Notice, which will be relied upon for its full terms, meaning and effect, stated that:

“The Issuer advises that:

- (a) the Shares were issued without disclosure to investors under Part 6D.2 of the Act;
- (b) this notice is being given under section 708A(5)(e) of the Act;
- (c) as a disclosing entity, the Issuer is subject to regular reporting and disclosure obligations;
- (d) as at the date of this notice, the Issuer has complied with:
 - (i) the provisions of Chapter 2M of the Act, as they apply to the Issuer; and
 - (ii) section 674 of the Act; and
- (e) as at the date of this notice, there is no information that is “excluded information” within the meanings of sections 708A(7) and 708A(8) of the Act” (p1);

- (b) otherwise, deny the paragraph.

210. In response to paragraph 210:

- (a) refer to and repeat paragraph 209 herein;
- (b) if (which is denied) the Tranche 1 Cleansing Notice Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

211. In response to paragraph 211:

- (a) refer to and repeat paragraphs 209 and 210 herein; and
- (b) otherwise, deny the paragraph.

212. In response to paragraph 212:

- (a) refer to and repeat paragraph 209 herein; and
- (b) otherwise, deny the paragraph.

213. Deny paragraph 213.

II Tranche 1 Cleansing Notice False Statements Conduct

214. In response to paragraph 214:

- (a) refer to and repeat paragraphs 209 and 212 herein; and
- (b) otherwise, deny the paragraph.

215. In response to paragraph 215:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

216. In response to paragraph 216:

- (a) refer to and repeat paragraphs 209 and 212 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

217. Deny paragraph 217.

M. TAKEAWAY.COM CONTRAVENTIONS

I Takeaway.com Misleading Conduct

218. Admit paragraph 218.

219. In response to paragraph 219:

- (a) say that the Takeaway.com Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed [sic] exclusive commercial multi-year agreements with Vietnammm.com a subsidiary of Takeaway.com”;
 - (ii) “GetSwift has brought into its ecosystem an additional partner group in its expanding geographic reach – Vietnammm.com. This approach continues to offer additional industry vertical touchpoints for its platform and market in new expanding markets, notably Asia”;

- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

220. In response to paragraph 220:

- (a) refer to and repeat paragraph 219 herein;
- (b) if (which is denied) the Takeaway.com Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

221. In response to paragraph 221:

- (a) refer to and repeat paragraphs 219 and 220 herein; and
- (b) otherwise, deny the paragraph.

221A. In response to paragraph 221A:

- (a) say that the Takeaway.com Contract, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) at clause 3:

“Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Vietnam and other regions nominated by client. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift’s provision of the Services.

- (ii) at clause 4:

“37 months (comprised of a trial period plus the initial term), as follows:

- Trial Period – (Includes 30 days free) Expires August 1st, 2017
- Initial Term – 36 months; Initial Term to start no later than 1st August 2017 to 1st of August 2020 – at least 7 days prior to the expiration of the trial period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the trial period. If no notice in writing is issued to GetSwift then the initial term will automatically commence on August 1st 2017.”

(b) otherwise, deny the paragraph.

222. In response to paragraph 222:

- (a) refer to and repeat paragraphs 8, ~~and 219,~~ and 221A herein;
- (b) rely upon the terms of the Takeaway.com Contract for the full force and effect; and
- (c) otherwise, deny the paragraph.

223. Deny paragraph 223.

II Takeaway.com False Statements Conduct

224. In response to paragraph 224:

- (a) refer to and repeat paragraphs 219 and 222 herein; and
- (b) otherwise, deny the paragraph.

225. In response to paragraph 225:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

226. In response to paragraph 226:

- (a) refer to and repeat paragraphs 219 and 222 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

227. Deny paragraph 227.

III Takeaway.com Macdonald Misleading Conduct

228. In response to paragraph 228:

- (a) refer to and repeat paragraphs 9 and 219 herein;
- (b) say that the Takeaway.com Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

229. In response to paragraph 229:

- (a) refer to and repeat paragraph 228 herein;
- (b) if (which is denied) the Takeaway.com Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

230. In response to paragraph 230:

- (a) refer to and repeat paragraphs 228 and 229 herein; and
- (b) otherwise, deny the paragraph.

231. In response to paragraph 231:

- (a) refer to and repeat paragraphs 222 and 228 herein; and
- (b) otherwise, deny the paragraph.

232. Deny paragraph 232.

IV Takeaway.com Macdonald False Statements Conduct

233. In response to paragraph 233:

- (a) refer to and repeat paragraphs 222 and 228 herein; and
- (b) otherwise, deny the paragraph.

234. In response to paragraph 234:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

235. In response to paragraph 235:

- (a) refer to and repeat paragraphs 222 and 228 herein; and
- (b) otherwise, deny the paragraph.

236. Deny paragraph 236.

N. TRANCHE 2 CLEANSING NOTICE CONTRAVENTIONS

I Tranche 2 Cleansing Notice Misleading Conduct

237. Admit paragraph 237.

238. In response to paragraph 238:

- (a) say that the Tranche 2 Cleansing Notice, which will be relied upon for its full terms, meaning and effect, stated that:

“The Issuer advises that:

- (a) the Shares were issued without disclosure to investors under Part 6D.2 of the Act;
- (b) this notice is being given under section 708A(5)(e) of the Act;
- (c) as a disclosing entity, the Issuer is subject to regular reporting and disclosure obligations;
- (d) as at the date of this notice, the Issuer has complied with:
 - (i) the provisions of Chapter 2M of the Act, as they apply to the Issuer; and
 - (ii) section 674 of the Act; and
- (e) as at the date of this notice, there is no information that is “excluded information” within the meanings of sections 708A(7) and 708A(8) of the Act”

- (b) otherwise, deny the paragraph.

239. In response to paragraph 239:

- (a) refer to and repeat paragraph 238 herein;
- (b) if (which is denied) the Tranche 2 Cleansing Notice Representation was made, admit that the representation was made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

240. In response to paragraph 240:

- (a) refer to and repeat paragraphs 238 and 239 herein; and
- (b) otherwise, deny the paragraph.

241. In response to paragraph 241:

- (a) refer to and repeat paragraph 238 herein; and
- (b) otherwise, deny the paragraph.

242. Deny paragraph 242.

II Tranche 2 Cleansing Notice False Statements Conduct.

243. In response to paragraph 243:

- (a) refer to and repeat paragraphs 238 and 241 herein; and
- (b) otherwise, deny the paragraph.

244. In response to paragraph 244:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

245. In response to paragraph 245:

- (a) refer to and repeat paragraphs 238 and 241 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

246. Deny paragraph 246.

O. FANTASTIC FURNITURE CONTRAVENING CONDUCT

I Fantastic Furniture Misleading Conduct

247. Admit paragraph 247.

248. In response to paragraph 248:

- (a) say that the Fantastic Furniture Announcement, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) “GetSwift ... is pleased to announce that it has signed [sic] exclusive commercial multi-year agreements with ... Fantastic Furniture (fantatsticfurniture.com.au)”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.
249. In response to paragraph 249:
- (a) refer to and repeat paragraph 248 herein;
- (b) if (which is denied) the Fantastic Furniture Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.
250. In response to paragraph 250:
- (a) refer to and repeat paragraphs 248 and 249 herein; and
- (b) otherwise, deny the paragraph.
- 250A. In response to paragraph 250A:
- (a) say that the Fantastic Furniture Contract, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) at clause 3:
- “Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:
- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
 - Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.
- GetSwift will use commercially reasonable efforts to provide the Services within Australia and other regions nominated by client. Upon reasonable request, Client must provide GetSwift with such information,

documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift's provision of the Services.

(ii) at clause 4:

"38 months (comprised of a trial period plus the initial term), as follows:

- Trial Period – (Includes 30 days free) Expires 1st October 2018
- Initial Term – 36 months; Initial Term to start no later than 1st September 2017 to 1st of September 2020 – at least 7 days prior to the expiration of the trial period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the trial period. If no notice in writing is issued to GetSwift then the initial term will automatically commence on 1st October 2017."

(b) otherwise, deny the paragraph.

251. In response to paragraph 251:

- (a) refer to and repeat paragraphs 8, ~~and 248~~ and 250A herein;
- (b) say that the Fantastic Furniture Contract included a trial period for the use of the GetSwift Platform;
- (c) rely upon the terms of the Fantastic Furniture Contract for their full force and effect; and
- (d) otherwise, deny the paragraph.

252. Deny paragraph 252.

II Fantastic Furniture False Statements Conduct

253. In response to paragraph 253:

- (a) refer to and repeat paragraphs 248 and 251 herein; and
- (b) otherwise, deny the paragraph.

254. In response to paragraph 254:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

255. In response to paragraph 255:

- (a) refer to and repeat paragraphs 248 and 251 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

256. Deny paragraph 256.

III Fantastic Furniture Macdonald Misleading Conduct

257. In response to paragraph 257:

- (a) refer to and repeat paragraphs 9 and 248 herein;
- (b) say that the Fantastic Furniture Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

258. In response to paragraph 258:

- (a) refer to and repeat paragraph 257 herein;
- (b) if (which is denied) the Fantastic Furniture Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

259. In response to paragraph 259:

- (a) refer to and repeat paragraph 257 herein; and
- (b) otherwise, deny the paragraph.

260. In response to paragraph 260:

- (a) refer to and repeat paragraphs 251 and 257 herein; and
- (b) otherwise, deny the paragraph.

261. Deny paragraph 261.

IV Fantastic Furniture Macdonald False Statements Conduct

262. In response to paragraph 262:

- (a) refer to and repeat paragraphs 251 and 257 herein; and
- (b) otherwise, deny the paragraph.

263. In response to paragraph 263:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

264. In response to paragraph 264:

- (a) refer to and repeat paragraphs 251 and 257 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

265. Deny paragraph 265.

V *Fantastic Furniture Disclosure Contravention*

266. In response to paragraph 266:

- (a) admit that Fantastic Furniture advised GetSwift of an intention not to proceed with the use of the GetSwift Platform after the end of the trial period on 1 October 2017; and
- (b) otherwise, deny the paragraph.

267. In response to paragraph 267:

- (a) say that the Respondents were aware as at 23 August 2017 that the Fantastic Furniture Contract was subject to a trial period;
- (b) refer to and repeat paragraphs 5, 7, 8, 248 and 266 herein; and
- (c) otherwise, deny the paragraph.

268. In response to paragraph 268:

- (a) refer to and repeat paragraphs 5, 7, 8, 248 and 266 herein; and
- (b) otherwise, deny the paragraph.

269. In response to paragraph 269:

- (a) refer to and repeat paragraphs 266 to 268 herein;
- (b) say, further or alternatively, that if it is found that the Fantastic Furniture Information and each individual item of the Fantastic Furniture Information existed at the start of each of the relevant dates pleaded by the Applicant in paragraph 267 and the Respondents were aware of it then as at the relevant

dates pleaded by the Applicant and at all material times thereafter for the purposes of ASX Listing Rule 3.1A:

- (i) the information comprised matters of supposition or was sufficiently indefinite to warrant disclosure;
 - (ii) the information was confidential; and
 - (iii) a reasonable person would not expect the information to be disclosed;
- (c) say, further or alternatively, that:
- (i) the information referred to in paragraph 267(a) was information that was generally available;
 - (ii) the Fantastic Furniture Information was not information which a reasonable person would expect, if it were generally available, to have a material effect on the price or value of GetSwift's securities; and

Particulars

Refer to and repeat paragraphs 7 and 8 herein.

- (d) otherwise, deny the paragraph.
270. In response to paragraph 270:
- (a) refer to and repeat paragraphs 5 and 269 herein; and
 - (b) otherwise, deny the paragraph.
271. In response to paragraph 271:
- (a) refer to and repeat paragraphs 5, 269 and 270 herein; and
 - (b) otherwise, deny the paragraph.
272. Deny paragraph 272.
273. In response to paragraph 273:
- (a) refer to and repeat paragraphs 269 to 272 herein; and
 - (b) otherwise, deny the paragraph.
274. In response to paragraph 274:
- (a) say that the allegation of involvement is embarrassing and liable to be struck out; and

- (b) otherwise, deny the paragraph.

O1. BSR FRANCHISING CONTRAVENING CONDUCT

I BSR Franchising Contravening Conduct

247A. Admit paragraph 274A but assume that any reference made to BRS in the Amended Statement of Claim is an error and is actually a reference to BSR.

274B. In response to paragraph 274B:

- (a) say that the BSR Franchising Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) “GetSwift ... is pleased to announce that it has signed [sic] exclusive commercial multi-year agreements with BETTA Home Living (Betta.com.au) ... ”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

274C. In response to paragraph 274C:

- (a) refer to and repeat paragraph 274B herein;
- (b) if (which is denied) the BSR Franchising Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

274D. In response to paragraph 274D:

- (a) refer to and repeat paragraphs 248 and 249 herein; and
- (b) otherwise, deny the paragraph.

274E. In response to paragraph 274E:

- (a) say that the BSR Franchising Contract, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) at clause 3:

“Client engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement on an exclusive basis following the Trial Period, as specified below:

- A non-exclusive license to use GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Australia and other regions nominated by client. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift’s provision of the Services...”

(ii) at clause 4:

“20 months (comprised of a trial period plus the initial term), as follows:

- Trial Period – 2 months (Includes 30 days free), commencing on the date that the parties reasonably agree that GetSwift’s proprietary software platform is operating effectively and available for immediate use by the Client (“Effective Date”)
- Initial Term – 18 months; provided that during the Trial Period, the Client has by notice in writing given to GetSwift elected to continue this Agreement for the Initial Term. If the Client elects to proceed with the Initial Term, the Initial Term will commence immediately following the expiration of the Trial Period and will continue for a period of 12 months [sic] from that date.”

(b) otherwise, deny the paragraph.

274F. In response to paragraph 274F:

- (a) refer to and repeat paragraphs 8, 274B and 274E herein;
- (b) say that the BSR Franchising Contract included a trial period for the use of the GetSwift Platform;
- (c) rely upon the terms of the BSR Franchising Contract for their full force and effect; and

- (d) otherwise, deny the paragraph.

274G. Deny paragraph 274G.

II BSR Franchising False Statements Conduct

274H. In response to paragraph 274H:

- (a) refer to and repeat paragraphs 274B and 274F herein; and
(b) otherwise, deny the paragraph.

274I. In response to paragraph 274I:

- (a) say the paragraph is embarrassing and liable to be struck out; and
(b) otherwise, deny the paragraph.

274J. In response to paragraph 274J:

- (a) refer to and repeat paragraphs 274B and 274F herein;
(b) say the paragraph is embarrassing and liable to be struck out; and
(c) otherwise, deny the paragraph.

274K. Deny paragraph 274K.

III BSR Franchising Macdonald Misleading Conduct

274L. In response to paragraph 274L:

- (a) refer to and repeat paragraphs 9 and 274B herein;
(b) say that the BSR Franchising Announcement was issued by GetSwift to the ASX for release by GetSwift; and
(c) otherwise, deny the paragraph.

274M. In response to paragraph 274M:

- (a) refer to and repeat paragraph 274L herein;
(b) if (which is denied) the BSR Franchising Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and

- (c) otherwise, deny the paragraph.

274N. In response to paragraph 274N:

- (a) refer to and repeat paragraph 274L herein; and
- (b) otherwise, deny the paragraph.

274O. In response to paragraph 274O:

- (a) refer to and repeat paragraphs 274F and 274L herein; and
- (b) otherwise, deny the paragraph.

274P. Deny paragraph 274P.

IV *BRS Franchising Macdonald False Statements Conduct*

274Q. In response to paragraph 274Q:

- (a) refer to and repeat paragraphs 274F and 274L herein; and
- (b) otherwise, deny the paragraph.

274R. In response to paragraph 274R:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

274S. In response to paragraph 274S:

- (a) refer to and repeat paragraphs 274F and 274L herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

274T. Deny paragraph 274T.

P. BARE BURGER CONTRAVENTIONS

I Bare Burger Misleading Conduct

275. Admit paragraph 275.

276. In response to paragraph 276:

- (a) say that the Bare Burger Announcement, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) GetSwift ... “is pleased to announce that it has signed an exclusive commercial multi-year agreement with Bareburger.com”;
 - (ii) “GetSwift has brought into its ecosystem an additional well-recognized consumer brand in its expanding food delivery vertical – Bareburger.com. The Company continues to demonstrate the competitive advantage of its platform in some of the most competitive markets globally”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

277. In response to paragraph 277:

- (a) refer to and repeat paragraph 276 herein;
- (b) if (which is denied) the Bare Burger Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

278. In response to paragraph 278:

- (a) refer to and repeat paragraphs 276 and 277 herein; and
- (b) otherwise, deny the paragraph.

278A. In response to paragraph 278A:

- (a) say that the Bare Burger Contract, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) at clause 3:
 - “Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:
 - Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
 - Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within USA and other regions nominated by client. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift's provision of the Services.

(ii) at clause 4:

"37 months (comprised of a trial period plus the initial term), as follows:

- Trial Period – (Includes 30 days free) Expires August 1st, 2017
- Initial Term – 36 months; Initial Term to start no later than 1st August 2017 to 1st of August 2020 – at least 7 days prior to the expiration of the trial period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the trial period. If no notice in writing is issued to GetSwift then the initial term will automatically commence on August 1st 2017."

(c) otherwise, deny the paragraph.

279. In response to paragraph 279:

- (a) refer to and repeat paragraphs 8, ~~and~~ 276 and 278A herein;
- (b) rely upon the terms of the Bare Burger Contract for their full force and effect; and
- (c) otherwise, deny the paragraph.

280. Deny paragraph 280.

II Bare Burger False Statements Conduct

281. In response to paragraph 281:

- (a) refer to and repeat paragraph 276 and 279 herein; and
- (b) otherwise, deny the paragraph.

282. In response to paragraph 282:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

283. In response to paragraph 283:

- (a) refer to and repeat paragraph 276 and 279 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

284. Deny paragraph 284.

III Bare Burger Macdonald Misleading Conduct

285. In response to paragraph 285:

- (a) refer to and repeat paragraphs 9 and 276 herein;
- (b) say that the Bare Burger Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

286. In response to paragraph 286:

- (a) refer to and repeat paragraph 285 herein;
- (b) if (which is denied) the Bare Burger Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

287. In response to paragraph 287:

- (a) refer to and repeat paragraph 285 herein; and
- (b) otherwise, deny the paragraph.

288. In response to paragraph 288:

- (a) refer to and repeat paragraph 285 herein; and
- (b) otherwise, deny the paragraph.

289. Deny paragraph 289.

IV Bare Burger Macdonald False Statements Conduct

290. In response to paragraph ~~280~~290:

- (a) refer to and repeat paragraphs 279 and 285 herein; and
- (b) otherwise, deny the paragraph.

291. In response to paragraph 291:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

292. In response to paragraph 292:

- (a) refer to and repeat paragraphs 279 and 285 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

293. Deny paragraph ~~289~~293.

Q. N A WILLIAMS CONTRAVENTIONS

I N A Williams Conduct

294. In response to paragraph 294:

- (a) GetSwift published and lodged with the ASX an announcement entitled “*GetSwift Partners with N.A. Williams in 1bn+ Transaction Per Annum Opportunity in the Automotive Sector*” on 12 September 2017 at 9:05am;
- (b) GetSwift published and lodged with the ASX an announcement entitled “*GetSwift Partners with N.A. Williams in 1bn+ Transaction Per Annum Opportunity in the Automotive Sector*” on 12 September 2017 at 10:31am (**Second N A Williams Announcement**); and
- (c) Otherwise, deny the paragraph.

295. In response to paragraph 295:

- (a) refer to and repeat paragraph 294 herein;
- (b) say that the Second NA Williams Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed an exclusive commercial 5 year agreement with N.A. Williams ... the leading representative group for the North American Automotive Sector”;
 - (ii) “The signing [sic] the 5 year agreement is expected to significantly increase the company’s reoccurring revenues by more than \$138,000,000 per year once fully captured”;

- (iii) “The Company and N.A. Williams expect to transform the delivery services across the automotive sector targeting the established national representation under management: AutoZone, NAPA ,Advance Auto Parts, Pep Boys, Truckpro, FleetPride, O’Reilly Auto Parts, and Traction Heavy Duty among others. N.A. Williams and the Company estimate that this structure will potentially yield in excess of 1.15 Billion (1,150,000,000) transactions a year when fully implemented. The Company estimates the fulfillment of this vertical will take at least 15-19 months due to the project scope, size and complexity of the channel partners”;
 - (iv) “[Roger McCollum] We’re pleased to partner with GetSwift and are excited about introducing the Company’s logistics and delivery optimizing solutions to our industry. Delivering the right product to the repair shop as quickly and efficiently as possible is critical to the success of every automotive retail and wholesale operation”;
 - (v) [Bane Hunter] “We are delighted to partner with N.A. Williams, a leader in the North American Automotive Sector. This partnership is expected to enable the Company to quickly expand into untapped verticals, and provides access to a vast distribution network, while at the same time leveraging more than 83 years of experience that our partners at N.A. Williams have in this sector”;
 - (vi) “The Company considers this a transformative agreement that will position the Company in a completely different market position and category once this channel is fully implemented. The Company will focus on putting in place the necessary operational structures and staffing to ensure its success”;
- (c) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus;
 - (d) say further that the statements made by GetSwift concerning its expectation for its delivery and revenue projections were, and could only reasonably be construed to be, statements of GetSwift’s opinion of future performance at the time of the Second N A Williams Announcement; and
 - (e) otherwise, deny the paragraph.

296. In response to paragraph 296:

- (a) refer to and repeat paragraph 295 herein;

- (b) if (which is denied) the NA Williams Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

297. In response to paragraph 297:

- (a) refer to and repeat paragraphs 295 and 296 herein;
- (b) otherwise, deny the paragraph.

297A. In response to paragraph 297A:

- (b) say that the N A Williams Contract, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) at clause 1:

“Representation/Territory. GETSWIFT hereby appoints NAW as its exclusive representative to provide sales and marketing services for the GETSWIFT Platform and Services within the territory as described in Attachment No. 1.”

- (ii) at clause 3:

“Compensation. GETSWIFT agrees to compensate NAW on all net sales resulting directly from NAW sales efforts which are accepted by GETSWIFT in the territory for which payment by customer is received, for the compensation as indicated in Attachment No. 2. Such Compensation shall be computed on the price of the GETSWIFT Platform and Services sold after discounts and allowances are calculated. Compensation shall be made promptly within thirty (30) days after the end of each month for which payments are received from customer for transactions that take place, as identified by the tracking and recording technology of GETSWIFT.”

- (iii) at clause 5:

“Purchase Order Reports & Negotiations. NAW agrees to promptly report to GETSWIFT all negotiations and purchase orders for acceptance by GETSWIFT. Approval of all sales orders and extension of customer credit are at the sole discretion of GETSWIFT.”

- (iv) at clause 13:

“Term. This Agreement shall continue in full force and effect for a three-year period from the date this Agreement is entered into as listed in the first paragraph hereof. It will be automatically renewed for an additional one-year period unless the other party notifies its intention not to renew at least 30 days prior to the end of the term...”

(v) at clause 14:

“Termination. Either party may terminate this Agreement for any reason by giving ninety (90) days written notice of such intention to the other party...”

(b) otherwise, deny the paragraph.

298. In response to paragraph 298:

(a) refer to and repeat paragraphs 8, ~~and 295,~~ and 297A herein;

(b) rely upon the terms of the N A Williams Contract for their full force and effect; and

(c) otherwise, deny the paragraph.

299. Deny paragraph ~~289~~299.

II N A Williams False Statements Conduct

300. In response to paragraph 300:

(a) refer to and repeat paragraphs 295 and 298 herein; and

(b) otherwise, deny the paragraph.

301. In response to paragraph 301:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

302. In response to paragraph 302:

(a) refer to and repeat paragraphs 295 and 298 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

303. Deny paragraph 303.

III N A Williams Macdonald Misleading Conduct

304. In response to paragraph 304:
- (a) refer to and repeat paragraphs 9 and 295 herein;
 - (b) say that the Second N A Williams Announcement was issued by GetSwift to the ASX for release by GetSwift; and
 - (c) otherwise, deny the paragraph.
305. In response to paragraph 305:
- (a) refer to and repeat paragraph 304 herein;
 - (b) if (which is denied) the NA Williams Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
306. In response to paragraph 306:
- (a) refer to and repeat paragraphs 304 and 305 herein; and
 - (b) otherwise, deny the paragraph.
307. In response to paragraph 307:
- (a) refer to and repeat paragraphs 299 and 304 herein; and
 - (b) otherwise, deny the paragraph.
308. Deny paragraph 308.
- IV NA Williams Macdonald False Statements Conduct*
309. In response to paragraph 309:
- (a) refer to and repeat paragraphs 295, 298 and 304 herein; and
 - (b) otherwise, deny the paragraph.
310. In response to paragraph 310:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
311. In response to paragraph 311:
- (a) refer to and repeat paragraphs 295, 298 and 304 herein;

- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

312. Deny paragraph 312.

R. JOHNNY ROCKETS CONTRAVENTIONS

I Johnny Rockets Misleading Conduct

313. Admit paragraph 313.

314. In response to paragraph 314:

- (a) say that the Johnny Rockets Announcement, which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed an exclusive multi-year agreement with Johnny Rockets”;
 - (ii) “The Company has commenced working with Johnny Rockets brands to deploy its platform in the Middle East and beyond across its portfolio of companies”;
 - (iii) “The Company expects to transform the delivery services across the territories as it works with its international partners. The Company’s indicative estimates are for a transaction yield in excess of millions of deliveries per year upon complete adoption and utilization”;
 - (iv) “The Company considers this a transformative agreement that will position the Company as an emerging leader in previously untapped markets such as the Middle East, and beyond once this channel is fully implemented”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

315. In response to paragraph 315:

- (a) refer to and repeat paragraph 314 herein;
- (b) if (which is denied) the Johnny Rockets Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and

(c) otherwise, deny the paragraph.

316. In response to paragraph 316:

(a) refer to and repeat paragraphs 314 and 315 herein; and

(b) otherwise, deny the paragraph.

316A. In response to paragraph 316A:

(a) say that the Johnny Rockets Contract, which will be relied upon for its full terms, meaning and effect, stated that:

(i) at clause 3:

“Client exclusively engages GetSwift to provide the following services (the “Services”) and GetSwift accepts such engagement:

- Use of GetSwift’s proprietary software platform to provide Client with logistics management, tracking, dispatch, route and reporting of delivery operations, including provision of SMS alerts, related reports and system data dumps; and
- Consultancy advice in relation to the Services in a reasonable number of meetings as Client reasonably requests.

GetSwift will use commercially reasonable efforts to provide the Services within Kuwait and other regions nominated by client. Upon reasonable request, Client must provide GetSwift with such information, documentation, materials, content, and access to personnel GetSwift deems necessary for GetSwift’s provision of the Services.

at clause 4:

“37 months (comprised of a trial period plus the initial term), as follows:

- Limited Roll Out Period – 1 month free; Period to run on or about November 1st, 2017 to the beginning of December 2017 2 stores
- Initial Term – 36 months; price guarantee; Initial Term to start no later than 1st December 2017 or possibly January 1st due to budget projections and run through to 1st of December 2020 – at least 7 days prior to the expiration of the Limited roll out period, the Client must by notice in writing (to be given to GetSwift) elect if it does not wish to continue this Agreement for the further initial term period of 36 months, commencing immediately following the expiration of the trial period. If no notice in writing is issued to

GetSwift then the initial term will automatically commence on December 1st 2017.”

(b) otherwise, deny the paragraph.

317. In response to paragraph 317:

(a) refer to and repeat paragraphs ~~8~~ and 314 and 317 herein;

(b) rely upon the terms of the Johnny Rockets Contract for their full force and effect; and

(c) otherwise, deny the paragraph.

318. Deny paragraph 318.

II Johnny Rockets False Statements Conduct

319. In response to paragraph 319:

(a) refer to and repeat paragraphs 314 and 317 herein; and

(b) otherwise, deny the paragraph.

320. In response to paragraph 320:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

321. In response to paragraph 321:

(a) refer to and repeat paragraphs 314 and 317 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

322. Deny paragraph 322.

III Johnny Rockets Macdonald Misleading Conduct

323. In response to paragraph 323:

(a) refer to and repeat paragraphs 9 and 314 herein;

(b) say that the Johnny Rockets Announcement was issued by GetSwift to the ASX for release by GetSwift; and

(c) otherwise, deny the paragraph.

324. In response to paragraph 324:
- (a) refer to and repeat paragraph 323 herein;
 - (b) if (which is denied) the Johnny Rockets Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
325. In response to paragraph 325:
- (a) refer to and repeat paragraphs 323 and 324 herein; and
 - (b) otherwise, deny the paragraph.
326. In response to paragraph 326:
- (a) refer to and repeat paragraphs 317 and 323 herein; and
 - (b) otherwise, deny the paragraph.
327. Deny paragraph 327.
- IV Johnny Rockets Macdonald False Statements Conduct*
328. In response to paragraph 328:
- (a) refer to and repeat paragraphs 317 and 323 herein; and
 - (b) otherwise, deny the paragraph.
329. In response to paragraph 329:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
330. In response to paragraph 330:
- (a) refer to and repeat paragraphs 317 and 323 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.
331. Deny paragraph 331.

S. OCTOBER APPENDIX 4C CONTRAVENTIONS

I October Appendix 4C Misleading Conduct

332. Admit paragraph 332, save as to the announcement being entitled “Quarterly Update and Appendix 4C”.
333. In response to paragraph 333:
- (a) say that the October Appendix 4C Announcement which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “The company expects to name additional key enterprise agreements shortly as soon as the legal frameworks have been accepted. New commercially signed multi-year enterprise agreement announcements are expected to continue unabated for a number of quarters”;
 - (ii) “Note: The company will only report executed commercial agreements. Unlike some other groups it will not report on Memorandum of Understandings (MOU) or Letters of Intent (LOI) that are by their very nature not commercially binding and not a valid assurance of future commercial outcomes”;
 - (b) say that the statements made in the October Appendix 4C Announcement were subject to the disclaimers and qualifications contained therein;
 - (c) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
 - (d) otherwise, deny the paragraph.
334. In response to paragraph 334:
- (a) refer to and repeat paragraph 333 herein;
 - (b) if (which is denied) the October Appendix 4C Representation was made, admit that the representation was made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
335. In response to paragraph 335:
- (a) refer to and repeat paragraphs 333 and 334 herein; and
 - (b) otherwise, deny the paragraph.
336. In response to paragraph 336:

- (a) refer to and repeat paragraph 333 herein; and
- (b) deny paragraph 336(a);
- (c) as to paragraph 336(b):
 - (i) say that the expression “material positive effect” is so vague and general as to be embarrassing and ought to be struck out;
 - (ii) otherwise, deny the paragraph; and
- (d) deny paragraph 336(c).

337. Deny paragraph 337.

II October Appendix 4C False Statements Conduct

338. In response to paragraph 338:

- (a) refer to and repeat paragraphs 333 and 336 herein; and
- (b) otherwise, deny the paragraph.

339. In response to paragraph 339:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

340. In response to paragraph 340:

- (a) refer to and repeat paragraphs 333 and 336 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

341. Deny paragraph 341.

III October Appendix 4C Macdonald Misleading Conduct

342. In response to paragraph 342:

- (a) refer to and repeat paragraphs 9 and 333 herein;
- (b) say that the October Appendix 4C Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

343. In response to paragraph 343:
- (a) refer to and repeat paragraph 342 herein;
 - (b) if (which is denied) the October Appendix 4C Macdonald Representation was made, admit that the representation was made in relation to a financial product (being GetSwift Shares); and
 - (c) otherwise, deny the paragraph.
344. In response to paragraph 344:
- (a) refer to and repeat paragraphs 342 and 343 herein; and
 - (b) otherwise, deny the paragraph.
345. In response to paragraph 345:
- (a) refer to and repeat paragraphs 336 and 342 herein; and
 - (b) otherwise, deny the paragraph.
346. Deny paragraph 346.
- IV October Appendix 4C Macdonald False Statements Conduct*
347. In response to paragraph 347:
- (a) refer to and repeat paragraphs 336 and 342 herein; and
 - (b) otherwise, deny the paragraph.
348. In response to paragraph 348:
- (a) say the paragraph is embarrassing and liable to be struck out; and
 - (b) otherwise, deny the paragraph.
349. In response to paragraph 349:
- (a) refer to and repeat paragraphs 336 and 342 herein;
 - (b) say the paragraph is embarrassing and liable to be struck out; and
 - (c) otherwise, deny the paragraph.
350. Deny paragraph 350.

T. YUM! BRANDS CONTRAVENTIONS

I Yum! Brands Misleading Conduct

351. Admit paragraph 351.

352. In response to paragraph 352:

- (a) say that the Yum! Brands Announcement which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed a global multiyear partnership with Yum! Brands”;
 - (ii) “In order to compete aggressively in this market Yum has partnered with GetSwift to provide its retail stores globally the ability to compete with their global counterparts when it comes to deliveries and logistics”;
 - (iii) “The unique partnership will provide Yum the use of the best in class logistics platform in order to continue improving the customer experience, reduce operational inefficiencies and expand market share”;
 - (iv) “The Company estimates that more than 250,000,000 deliveries annually will benefit from its platform as a result of this partnership after implementation. Initial deployments will commence in the Middle East, and Asia Pac, with more than 20 countries slated to be rolled out in the first and second phase, followed by a broader deployment thereafter. The company will be focused on concurrent multi regional rollouts to speed up global coverage”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

353. In response to paragraph 353:

- (a) refer to and repeat paragraph 352 herein;
- (b) if (which is denied) the Yum! Brands Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

354. In response to paragraph 354:

- (a) refer to and repeat paragraphs 352 and 353 herein; and

- (b) otherwise, deny the paragraph.

354A. In response to paragraph 354A:

- (a) say that the Yum! Brands Contract, which will be relied upon for its full terms, meaning and effect, stated that:

- (i) at clause 2.1:

“Supplier will deliver to Yum or designated entities within the Yum System the Services and Deliverables described in each SOW, in accordance with this Agreement and the applicable SOW. Services to be provided include at no additional cost all incidental services and tasks necessary to provide acceptable Services and Deliverables.”

- (ii) at clause 2.2:

“(a) Except as otherwise set forth in an applicable SOW, Deliverables must meet deadlines, specifications and acceptance criteria set forth in each SOW, to the reasonable satisfaction of Yum (“Acceptance Criteria”). Yum, with Supplier’s cooperation and assistance, will conduct acceptance tests to verify whether the Deliverables meet Acceptance Criteria. Yum shall have (i) a maximum period to test the Deliverables (“Acceptance Period”) from the date a Deliverable had been put into production use for all primary uses contemplated by the SOW (for example, if a primary use is end-of-year accounting then acceptance testing would begin during such end-of-year period, or if production use of a Deliverable depends on subsequently delivered Services or Deliverables then acceptance testing would begin upon delivery of the relevant Services or Deliverables), or (ii) such other specific period as may be mutually agreed upon as set forth in the applicable SOW. Yum may reject any Deliverable that does not conform to the applicable Acceptance Criteria. Supplier will promptly remedy such nonconformance at no additional charge to Yum. If Supplier does not remedy a nonconforming Deliverable within 30 days after Yum’s notice of rejection, in addition to all other remedies available to Yum, Yum (a) may immediately terminate the applicable SOW and (b) will have no obligation to pay for such Deliverable or any Services and materials expended by Supplier in connection with the creation or delivery of such Deliverable, and Yum may require Supplier to refund to Yum all amounts previously paid by or on behalf of Yum for Services provided in connection with creating or delivering such Deliverable.”

- (iii) at clause 3.2:

“Each SOW is expected to contain the following: (a) a summary and detailed description of the Services and Deliverables to be provided by Supplier; (b) applicable performance standards, service levels, specifications and Acceptance Criteria for such Services and Deliverables, and specific remedies (if any), in addition to those contained in this Agreement, for failure to meet such service levels or specifications, (c) the decisions, cooperation and materials, if any, to be provided by Yum; (d) the compensation to be paid and, if expressly authorized, the expenses to be paid, for Services and Deliverables delivered in accordance with the SOW, and any applicable taxes; (e) the time schedule for completion of the Services and delivery of Deliverables; and (f) the designated project leader for each Party.”

(iv) at clause 1.2, deliverables was defined as:

“the specific product or products to be provided by Supplier as a result of or in connection with Services under a SOW, including software.”

(v) at clause 1.5, Statement of Work (“SOW”) was defined as:

“the specific agreement from time to time by which Yum as a customer may engage Supplier to perform Services and provide Deliverables...”

(b) otherwise, deny the paragraph.

355. In response to paragraph 355:

(a) refer to and repeat paragraphs 8~~1~~ and 352, and 354A herein;

(b) rely upon the terms of the Yum! Contract for their full force and effect;~~and~~

(c) admit that there were no Statements of Work executed between GetSwift and Yum!; and

(d) otherwise, deny the paragraph.

356. Deny paragraph 356.

II Yum! Brands False Statements Conduct

357. In response to paragraph 357:

(a) refer to and repeat paragraphs 352 and 355 herein; and

(b) otherwise, deny the paragraph.

358. In response to paragraph 358:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

359. In response to paragraph 359:

- (a) refer to and repeat paragraphs 352 and 355 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

360. Deny paragraph 360.

III Yum! Brands Macdonald Misleading Conduct

361. In response to paragraph 361:

- (a) refer to and repeat paragraphs 9 and 352 herein;
- (b) say that the Yum! Brands Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

362. In response to paragraph 362:

- (a) refer to and repeat paragraph 361 herein;
- (b) if (which is denied) the Yum! Brands Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

363. In response to paragraph 363:

- (a) refer to and repeat paragraph 361 herein; and
- (b) otherwise, deny the paragraph.

364. In response to paragraph 364:

- (a) refer to and repeat paragraphs 352, 354 and 361 herein; and
- (b) otherwise, deny the paragraph.

365. Deny paragraph 365.

IV Yum! Brands Macdonald False Statements Conduct

366. In response to paragraph 366:

- (a) refer to and repeat paragraphs 352 and 354 herein; and
- (b) otherwise, deny the paragraph.

367. In response to paragraph 367:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

368. In response to paragraph 368:

- (a) refer to and repeat paragraphs 352 and 354 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

369. Deny paragraph 369.

U. AMAZON CONTRAVENTIONS

I Amazon Misleading Conduct

370. Admit paragraph 370 and say further that the First Amazon Announcement was issued at 10:01am.

371. In response to paragraph 371:

- (a) say that the First Amazon Announcement which will be relied upon for its full terms, meaning and effect, stated that:
 - (i) “GetSwift ... is pleased to announce that it has signed a global agreement with Amazon”;
 - (ii) “Due to the terms and conditions of the agreement and the highly sensitive nature, no further information will be provided by the company other than to comply with regulatory requirements for disclosure”;
- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

372. Admit paragraph 372 and say further that the Second Amazon Announcement was issued at 6:32pm.

373. In response to paragraph 373:

- (a) say that the Second Amazon Announcement which will be relied upon for its full terms, meaning and effect, stated that:

“At the request of ASX, GetSwift ... provides the following update to its ASX announcement dated 1 December 2017. GetSwift is pleased to announce that it has signed a global master services agreement with Amazon. The extent of the services to be provided and the revenues to be derived will be generated from specific transactions agreed with Amazon pursuant to the Master Services Agreement. Due to the terms of the agreement the number of deliveries this agreement may generate is currently not determinable”;

- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

374. In response to paragraph 374:

- (a) refer to and repeat paragraphs 371 and 373 herein;
- (b) if (which is denied) the Amazon Representation was made, admit that the representation was made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

375. In response to paragraph 375:

- (a) refer to and repeat paragraphs 371, 373 and 374 herein; and
- (b) otherwise, deny the paragraph.

375A. In response to paragraph 375A:

- (a) say that the Amazon Contract, which will be relied upon for its full terms, meaning and effect, stated that:
- (i) at clause 1.1:

“Ordering Services. Supplier will provide the Services described in this Agreement and any Service Order in accordance with the terms and conditions of this Agreement and the applicable Service Order... Any Affiliate of Amazon may enter into Service Orders with Supplier under this Agreement, and with respect to such Service Orders, such Affiliate

becomes a party to this Agreement and references to Amazon in this Agreement are deemed to be references to such Affiliate. With respect to Amazon, each Service Order is a separate obligation of the Amazon entities or entity that execute(s) such Service Order and no other Amazon entity has any obligation under such Service Order. Except as expressly set forth in a Service Order, Amazon makes no representation or promise as to the amount of business Supplier can expect at any time under this Agreement. If Amazon provides any estimates of its needs, the estimates are only for the Parties' convenience and will not bind Amazon. Amazon will not be liable for any actions taken by Supplier to the extent it is based on an estimate. Nothing herein will be construed to require Amazon to utilize or implement any or all of the Services or System at any given time."

(ii) at clause 10.1:

"Term. This Agreement begins on the Effective Date and, unless earlier terminated pursuant to this Agreement, continues for a period of one year. Upon expiration of such period, this Agreement will automatically renew on a month-to-month basis until Amazon gives at least 60 days prior written notice of termination, provided, however, the terms of this Agreement will apply to any Service Order in effect as of the date of termination. Amazon may terminate this Agreement or any Service Order for any or no reason, by giving at least 30 days prior written notice to Supplier. Upon any such termination, Amazon is only liable to pay for Services performed and liabilities incurred prior to expiration or termination. In addition, Amazon may terminate this Agreement or any portion of the Services not then performed immediately upon written notice for Supplier's material breach of this Agreement ..."

(b) otherwise, deny the paragraph.

376. In response to paragraph 376:

- (a) refer to and repeat paragraphs 8, 371 and 373 herein;
- (b) rely upon the terms of the Amazon Contract for their full force and effect; and
- (c) otherwise, deny the paragraph.

377. Deny paragraph 377.

II Amazon False Statements Conduct

378. In response to paragraph 378:

- (a) refer to and repeat paragraphs 371, 373 and 376 herein; and
- (b) otherwise, deny the paragraph.

379. In response to paragraph 379:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

380. In response to paragraph 380:

- (a) refer to and repeat paragraphs 371, 373 and 376 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

381. Deny paragraph 381.

III Amazon Macdonald Misleading Conduct

382. In response to paragraph 382:

- (a) refer to and repeat paragraphs 9 and 371 and 373 herein;
- (b) say that the First Amazon Announcement and the Second Amazon Announcement were issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

383. In response to paragraph 383:

- (a) refer to and repeat paragraph 382 herein;
- (b) if (which is denied) the Amazon Macdonald Representation was made, admit that the representation was made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

384. In response to paragraph 384:

- (a) refer to and repeat paragraphs 382 and 383 herein; and
- (b) otherwise, deny the paragraph.

385. In response to paragraph 385:

- (a) refer to and repeat paragraph 382 herein; and

(b) otherwise, deny the paragraph.

386. Deny paragraph 386.

IV Amazon Macdonald False Statements Conduct

387. In response to paragraph 387:

(a) refer to and repeat paragraphs 376 and 372 herein; and

(b) otherwise, deny the paragraph.

388. In response to paragraph 388:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

389. In response to paragraph 389:

(a) refer to and repeat paragraphs 376 and 372 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

390. Deny paragraph 390.

V. DECEMBER 2017 CBA CONTRAVENTIONS

I December 2017 CBA Misleading Conduct

391. Admit paragraph 391.

392. In response to paragraph ~~373~~392:

(a) say that the December 2017 CBA Announcement which will be relied upon for its full terms, meaning and effect, stated that:

(i) "GetSwift .. is pleased to provide an update on the exclusive multi year partnership it has signed with Australia's leading financial institution Commonwealth Bank of Australia";

(ii) "As previously noted Commonwealth Bank of Australia has partnered with GetSwift to offer retail merchants the ability to compete with their global counterparts when it comes to deliveries and logistics";

- (iii) “The exclusive partnership will allow CBA’s retail merchants to access an affordable best in class logistics platform to continue to improve their customer experience in distributing their goods”;
- (iv) “Initially, it will benefit merchants and consumers in two ways: 1) It will turn every Albert POS vendor into a delivery-ready store- automatically queueing, batching, routing and dispatching the delivery of any goods purchased using an Albert POS. This process will be seamlessly managed by the terminal, and the delivery will be outsourced to either existing logistics companies on the GetSwift network, or the merchant’s inhouse delivery team. 2) By arming delivery drivers on GetSwift’s network with an Albert platform POS terminal and associated devices, it will now allow for consumers to pay for goods on arrival as opposed to paying for them ahead of time, incentivising better delivery processes and reduced wait time. As our customers continue to use emerging online retail services, we believe we also have a role to play in enhancing that experience”;
- (v) “Both the Company and CBA are pleased with the progress of the program. Extensive testing, security reviews, stability metrics, and validation of the platform has been conducted in 2017. Some key highlights:
 - i. The Driver application has been jointly tested and is fully functional/ready for use.
 - ii. The payment component has been jointly tested and is being validated live in select markets.
 - iii. The Store application has been jointly tested and is fully functional/ready for use.
 - iv. CBA will begin deploying the GetSwift platform as part of the new Albert operating system rollout. Although a deployment under the old CBA Albert operating system was considered to speed up market deployment by a few months, strategically the bundling of the GetSwift service with the new Albert operating system was the preferred choice and agreed by both organisations.
 - v. Approximately 90,000 merchants will receive the new operating system with the GetSwift platform with go to market live rollouts planned from Feb 2018 onwards.
 - vi. The company expects to see revenues from the market utilization to start manifesting in mid-2018.

vii. CBA and GetSwift will jointly address and market the new product from Feb 2018 onwards”;

- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

393. In response to paragraph 393:

- (a) refer to and repeat paragraph 392 herein;
- (b) if (which is denied) the December 2017 CBA Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

394. In response to paragraph 394:

- (a) refer to and repeat paragraphs 392 and 393 herein; and
- (b) otherwise, deny the paragraph.

395. In response to paragraph 395:

- (a) refer to and repeat paragraphs 8 and 392 herein;
- (b) rely upon the terms of the CBA Contract for their full force and effect; and
- (c) otherwise, deny the paragraph.

396. Deny paragraph 396.

II December 2017 CBA False Statements Conduct

397. In response to paragraph 397:

- (a) refer to and repeat paragraphs 392 and 395 herein; and
- (b) otherwise, deny the paragraph.

398. In response to paragraph 398:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

399. In response to paragraph 399:

- (a) refer to and repeat paragraphs 392 and 395 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

400. Deny paragraph 400.

III December 2017 CBA Macdonald Misleading Conduct

401. In response to paragraph 401:

- (a) refer to and repeat paragraphs 9 and 392 herein;
- (b) say that the December 2017 CBA Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

402. In response to paragraph 402:

- (a) refer to and repeat paragraph 401 herein;
- (b) if (which is denied) the December 2017 CBA Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares; and
- (c) otherwise, deny the paragraph.

403. In response to paragraph 403:

- (a) refer to and repeat paragraphs 401 and 402 herein; and
- (b) otherwise, deny the paragraph.

404. In response to paragraph 404:

- (a) refer to and repeat paragraphs 395 and 401 herein; and
- (b) otherwise, deny the paragraph.

405. Deny paragraph 405.

IV December 2017 CBA Macdonald False Statements Conduct

406. In response to paragraph 406:

- (a) refer to and repeat paragraphs 395 and 401 herein; and

(b) otherwise, deny the paragraph.

407. In response to paragraph 407:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

408. In response to paragraph 408:

(a) refer to and repeat paragraphs 395 and 401 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

409. Deny paragraph 409.

W. TOAST CONTRAVENTIONS

I Toast Misleading Conduct

410. Admit paragraph 410.

411. In response to paragraph 411:

(a) say that the Toast Announcement which will be relied upon for its full terms, meaning and effect, stated that:

(i) “GetSwift ... is pleased to announce that it has signed a partnership agreement with Toast (Toastab.com)”;

(ii) “GetSwift has partnered with Toast to offer additional global touchpoints for its platform. Toast is a POS platform for restaurants and hospitality businesses primarily based in the United States. Currently Toast is present in more than 42 states and covers a network of more than 20,000 merchant outlets”;

(iii) “The technical integration with the Toast platform has already been well progressed in parallel with finalising the agreement, and as a result deployment of the GetSwift solution will commence without delay across the merchant network. Upon completion the Company estimates that this will have a capacity impact of up to 400,000 deliveries a month, or close to 5,000,000 per year through organic channel growth”;

(iv) “The Company continues to execute its technical, product and commercial roadmap as planned. It is well positioned to continue expanding across all venues and channels that will allow it to have

unrestricted access to as many merchants as possible that require delivery or order fulfilment functions regardless of industry vertical, size or geographic placement”;

- (b) refer to and repeat paragraphs 7 and 8 herein and say that the business and fee structure model of GetSwift was a matter of public record including that it was disclosed in the Prospectus; and
- (c) otherwise, deny the paragraph.

412. In response to paragraph 412:

- (a) refer to and repeat paragraph 411 herein;
- (b) if (which is denied) the Toast Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

413. In response to paragraph 413:

- (a) refer to and repeat paragraphs 411 and 412 herein; and
- (b) otherwise, deny the paragraph.

414. In response to paragraph 414:

- (a) refer to and repeats paragraph 411 herein;
- (b) rely upon the terms of the Toast Contract for their full force and effect; and
- (c) otherwise, deny the paragraph.

415. Deny paragraph 415.

II Toast False Statements Conduct

416. In response to paragraph 416:

- (a) refer to and repeat paragraphs 411 and 415 herein; and
- (b) otherwise, deny the paragraph.

417. In response to paragraph 417:

- (a) say the paragraph is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

418. In response to paragraph 418:

- (a) refer to and repeat paragraphs 411 and 415 herein;
- (b) say the paragraph is embarrassing and liable to be struck out; and
- (c) otherwise, deny the paragraph.

419. Deny paragraph 419.

III Toast Macdonald Misleading Conduct

420. In response to paragraph 420:

- (a) refer to and repeat paragraphs 9 and 411 herein;
- (b) say that the Toast Announcement was issued by GetSwift to the ASX for release by GetSwift; and
- (c) otherwise, deny the paragraph.

421. In response to paragraph 421:

- (a) refer to and repeat paragraph 420 herein;
- (b) if (which is denied) the Toast Macdonald Representations were made, admit that the representations were made in relation to a financial product (being GetSwift Shares); and
- (c) otherwise, deny the paragraph.

422. In response to paragraph 422:

- (a) refer to and repeat paragraphs 420 and 421 herein; and
- (b) otherwise, deny the paragraph.

423. In response to paragraph 423:

- (a) refer to and repeat paragraphs 414 and 420 herein; and
- (b) otherwise, deny the paragraph.

424. Deny paragraph 424.

IV Toast Macdonald False Statements Conduct

425. In response to paragraph 425:

- (a) refer to and repeat paragraphs 411 and 414 herein; and

(b) otherwise, deny the paragraph.

426. In response to paragraph 426:

(a) say the paragraph is embarrassing and liable to be struck out; and

(b) otherwise, deny the paragraph.

427. In response to paragraph 427:

(a) refer to and repeat paragraphs 411 and 414 herein;

(b) say the paragraph is embarrassing and liable to be struck out; and

(c) otherwise, deny the paragraph.

428. Deny paragraph 428.

X. CONTINUING REPRESENTATIONS

429. In response to paragraph 429:

(a) refer to and repeat their response to each of the allegations of the making of the Representations herein; and

(b) otherwise, deny the paragraph.

Y. CLIENT CONTRACTS DISCLOSURE CONTRAVENTIONS

430. In response to paragraph 430:

~~say that the paragraph does not identify which "client contracts" are the subject of the allegations such that it is embarrassing and liable to be struck out;~~

(a) repeat paragraphs 5, 7, and 8, 13A, 41A, 60A, 79A, 117A, 145A, 173A, 192A, 221A, 250A, 274E, 278A, 297A, 316A, 354A and 375A herein; and

(b) say that the customer contracts (as identified in the particulars to the allegation) will be relied upon for their full terms, meaning and effect; and

(c) otherwise, deny the paragraph.

431. In response to paragraph 431:

(a) refer to and repeat paragraphs 9 and 430 herein; and

(b) otherwise, deny the paragraph.

432. In response to paragraph 432:

- (a) refer to and repeat paragraphs 430 and 431 herein;
- (b) if it is found that the Client Contract Information as pleaded in paragraph 430 of the SOC existed and that the Respondents were aware of it at all relevant times during the Claim Period, say that this information was:
 - (i) information that was generally available;
 - (ii) not information which a reasonable person would expect, if it were generally available, to have a material effect on the price or value of GetSwift's securities; and
- (c) otherwise, deny the paragraph.

433. In response to paragraph 433:

- (a) refer to and repeat paragraphs 5 and 432 herein; and
- (b) otherwise, deny the paragraph.

434. In response to paragraph 434:

- (a) refer to and repeat paragraphs 5, 432 and 433 herein; and
- (b) otherwise, deny the paragraph.

435. Deny paragraph 435.

436. In response to paragraph 436:

- (a) refer to and repeat paragraphs 432 and 435 herein; and
- (b) otherwise, deny the paragraph.

437. In response to paragraph 437:

- (a) say that the allegation of involvement is embarrassing and liable to be struck out; and
- (b) otherwise, deny the paragraph.

Z. CORRECTIVE DISCLOSURE AND PRICE OF GETSWIFT SHARES

438. Admit paragraph 438.

439. In response to paragraph 439:

- (a) admit that the Australian Financial Review published an article on 19 January 2018 entitled “GetSwift: Too Fast For Its Own Good” (**19 January 2018 AFR Article**);
 - (b) will rely upon the 19 January 2018 AFR Article for its full terms, meaning and effect; and
 - (c) otherwise, deny the paragraph.
440. Admit paragraph 440.
441. In response to paragraph 441:
- (a) say that GetSwift issued an ASX announcement on 22 January 2018 entitled “Trading Halt”, by which securities of GetSwift were placed in a trading halt session state at the request of GetSwift, pending the release of an announcement by the company; and
 - (b) otherwise, admit the paragraph.
442. In response to paragraph 442:
- (a) admit that GetSwift issued the 25 January 2018 Announcement;
 - (b) rely upon the terms of the 25 January 2018 Announcement for their full and force effect; and
 - (c) otherwise, deny the paragraph.
443. In response to paragraph 443:
- (a) admit that GetSwift issued the 19 February 2018 Announcement;
 - (b) rely upon the terms of the 19 February 2018 Announcement for their full and force effect;
 - (c) say that the 19 February 2018 Announcement stated that:
 - (i) “GetSwift is focused on two main client segments: 1. National and multinational enterprise clients (Enterprise Clients); and 2. Internet based self-serve clients (Self-serve Clients)”;
 - (ii) “Enterprise clients are larger organisations with multi-site requirements and monthly potential volumes of over 10,000 deliveries”;
 - (iii) “Typically, contracts for Enterprise Clients are initially two years in length, with initial periods of testing and integration. These agreements are attractive to clients due to their specific levels of customisation, and the

unique aspect of GetSwift's technology means that client usage normally is expected to increase once implemented”;

- (iv) “Almost 50% of GetSwift's Enterprise Client contracts have progressed through to early stages of the revenue generation phase. These are primarily comprised of earlier Enterprise Client contracts. Other than as previously disclosed, the majority of announced Enterprise Client contracts continue to progress through various pre-revenue generation phases”;
- (v) “Depending on a client's existing technology ecosystem, testing and analysis is required before achieving full integration of GetSwift's technology”;
- (vi) “GetSwift's will continue to assess on a case by case basis whether any other contracts moving to revenue generation phase (or their termination) require disclosure to market”; and

(d) otherwise, deny the paragraph.

444. In response to paragraph 444:

- (a) repeat paragraph 441 herein;
- (b) say that the ASX issued an announcement entitled “ASX Market Release – Reinstatement” on 19 February 2018, the terms of which stated that the securities of GetSwift would be reinstated to official quotation immediately; and
- (c) otherwise, deny the paragraph.

445. Admit paragraph 445.

446. Admit paragraph 446.

447. Admit paragraph 447.

448. In response to paragraph 448:

- (a) deny that the GetSwift share price on 7 December 2017 as outlined in Annexure A to the SOC was \$0;
- (b) say that the correct references for the GetSwift share price on 7 December 2017 were:

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
07 December 2017	3.6	4	3.3	4

- (c) say further that the share price references for the following days within the Claim Period ought to be included in Annexure A:

Date	Open (\$)	High (\$)	Low (\$)	Close (\$)
21 June 2017	.86	.86	.86	.86
22 June 2017	.86	.86	.86	.86
30 November 2017	1.96	1.96	1.96	1.96
08 December 2017	4	4	4	4
22 January 2018	3.14	3.17	2.77	2.92
23 January 2018- 16 February 2018	2.92	2.92	2.92	2.92

- (d) otherwise, admit the paragraph.

AA. LOSS AND DAMAGE

449. In response to paragraph 449:

- (a) admit that the Applicant acquired an interest in GetSwift Shares during the Claim Period;
- (b) do not know and cannot admit that Group Members acquired any interest in GetSwift Shares;
- (c) admit that, to the extent that GetSwift Shares were acquired on the financial market operated by ASX, they were acquired in a market having the characteristics alleged in paragraph 449(a) and, depending on the nature of the information disclosed, paragraph 449(b); and
- (d) otherwise, deny the paragraph.

450. In response to paragraph 450:

- (a) repeat paragraphs 448 and 449 herein and their response to each of the allegations of Contravening Conduct; and
- (b) otherwise, deny the paragraph.

451. In response to paragraph 451:

- (a) repeat paragraph 449 herein; and
- (b) otherwise, do not know and cannot admit the paragraph.

452. In response to paragraph 452:

- (a) repeat their response to each of the allegations of the making of the Representations; and

(b) otherwise, do not know and cannot admit the paragraph.

453. In response to paragraph 453:

(a) repeat their response to each of the allegations of the making of the Representations; and

(b) otherwise, do not know and cannot admit the paragraph.

454. In response to paragraph 454:

(a) repeat their response to each of the allegations of Contravening Conduct; and

(b) otherwise, do not know and cannot admit the paragraph.

455. In response to paragraph 455:

(a) say that no Applicant or Group Member suffered loss or damage in the absence of proof that such persons individually relied in fact on the alleged Contravening Conduct, and no such loss or damage can be awarded; and

(b) otherwise, deny the paragraph.

456. In response to paragraph 456:

(a) refer to and repeat paragraphs 449 to 455 herein; and

(b) otherwise, deny the paragraph.

457. In response to paragraph 457:

(a) refer to and repeat paragraphs 449 to 455 herein; and

(b) otherwise, deny the paragraph.

Claim of loss from Mr Macdonald

458. In response to paragraph 458:

(a) refer to and repeat paragraph 455 herein; and

(b) otherwise, deny the paragraph.

459. In response to paragraph 459:

(a) refer to and repeat paragraphs 449 to 455 and 458 herein; and

(b) otherwise, deny the paragraph.

Further answer to allegations of loss or damage

459A In further or alternative answer to paragraphs 449 to 459, say that any loss suffered by any Applicant or Group Member, or any decline in the price of GSW Shares in the period following resumption of trading on the ASX on 19 February 2018, was caused in whole or in part by matters other than Respondent's contravening conduct.

Particulars

1. The announcement, and reporting, of the investigation and potential commencement of representative proceedings by:
 - a. the law firm Squire Patton Boggs (AU) (**SPB**) on or around 2 February 2018;
 - b. the law firm Gadens on or around 19 February 2018;
 - c. the law firm MC Lawyers & Advisers on or around 19 February 2018;
 - d. the litigation funder Vannin Capital (in association with the law firm Corrs Chambers Westgarth) on or around 20 February 2018; and
 - e. the law firm Phi Finney McDonald on or around 21 February 2018.
2. The matters asserted in the particulars to paragraph 461 below.
3. Further particulars may be provided at a later date.

BB. COMMON QUESTIONS OF FACT OR LAW

460. Do not plead to paragraph 460 as no allegation is contained within it, and will otherwise address the questions of common law or fact appropriate for any initial hearing at the appropriate time.

CC. PROPORTIONATE LIABILITY

461. In further answer to the claims against the Respondents based on alleged contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL as outlined in the SOC (**Apportionable Claims**), if either or both of the First or Second Respondents are liable to the Applicant for any loss or damage alleged in the SOC (**Alleged Loss**), which is denied, then for the purposes of this Defence only:

- (a) these claims are "apportionable claims" within the meaning of s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the Competition and Consumer Act, s 34 of the *Civil Liability Act 2002* (NSW) (**CLA**) and the corresponding provisions in the legislation of the other States and Territories; and
- (b) Amanda Kim Banton (**Ms Banton**) and each partner of the firm Squire Patton Boggs AU (**SPB**) at each of the relevant times is a "concurrent wrongdoer" within the meaning of s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB(3) of the Competition and Consumer Act, s 34 of the CLA and the corresponding provisions in the legislation of the other States and Territories; and

Particulars

1. At all material times, SPB:
 - a. conducted business within New South Wales as legal practitioners under the partnership name "Squire Patton Boggs (AU)";
 - b. included among its partners persons who were practicing as legal practitioners including Ms Banton who at all material times was a partner of SPB;
 - c. was, by reason of s 761F of the Corporations Act, a person for the purposes of Chapter 7 of the Corporations Act with the changes set-out therein;
 - d. was governed, inter alia, by the *Partnership Act 1892* (NSW), such that each partner of SPB (including Ms Banton):
 - i. is an agent of the firm and each partner of the firm for the purposes of the business of the partnership; and
 - ii. is liable jointly with the other partners for all wrongful acts or omissions of any partner acting in the ordinary course of the business of SPB; and
 - e. unless the context otherwise requires, a reference to SPB is a reference jointly and severally to each of the partners of the firm SPB at the time of the relevant events.

2. At all material times, the top twenty shareholders of GetSwift included:
 - a. The Second Respondent, Mr Macdonald, who as at 29 September 2017 (according to GetSwift's Annual Report):
 - i. held 36,750,284 (or 23.64% of) units in GetSwift; and
 - ii. was granted an interest in approximately 14,817,073 performance rights in GetSwift, which would be convertible into the same number of shares (subject to the achievement of certain metrics over a period of 48 months);
 - b. Mr Bane Hunter, the Executive Chairman of GetSwift during the Claim period and who as at 29 September 2017 (according to GetSwift's Annual Report):
 - i. held 6,714,554 (or 4.32% of) units in GetSwift according to the GetSwift Annual Report; and
 - ii. was granted interest in approximately 14,817,073 performance rights in GetSwift, which would be convertible into the same

number of shares (subject to the achievement of certain metrics over a period of 48 months).

3. On 31 January 2018, GetSwift issued its quarterly Appendix 4C (**31 January 2018 Appendix 4C**) to ASX, which stated that:
 - a. the cash and cash equivalents held by GetSwift at the end of the quarter totalled approximately \$96,046,000; and
 - b. GetSwift was not a party to any financing facilities.
4. From sometime in or about January or February 2018, SPB was investigating and pursuing a potential representative proceeding against GetSwift and/or various of its directors or officers (**GSW Class Action**).

Sub-particulars

- A. The Respondents refer to the SPB release entitled “Notice of Investigation – Potential Class Action: GetSwift Ltd (ASX:GSW)” dated 2 February 2018 (<https://www.squirepattonboggs.com/en/news/2018/02/notice-of-investigation-potential-class-action-getswift-ltd-asx-gsw>).
 - B. Further particulars may be provided following pre-trial procedures.
5. Ms Banton, a partner of SPB, was leading the investigation and pursuit of the GSW Class Action by SPB, together with persons employed by or acting on behalf of SPB who were under her supervision and direction.
 6. On 20 February 2018, representative proceedings were commenced by Dwayne Cavan Shanahan Perera (**Mr Perera**) and group members against the Cross-Claimants by the filing of an Originating Application and Statement of Claim (**Perera Statement of Claim**) in Federal Court of Australia proceeding number NSD226/2018 (**Perera Proceeding**).
 7. Ms Banton, of SPB, was the lawyer on the record for Mr Perera in the Perera Proceeding and was responsible as the lawyer on the record for the initiation and conduct of the Perera Proceeding.
 8. On 22 March 2018, SPB filed an Amended Statement of Claim on behalf of Perera and group members in the Perera Proceeding.
 9. Prior to the commencement of the Perera Proceeding, and since at least 19 February 2018, Ms Banton and/or some person acting by or on behalf of SPB caused to be publicly published on the website of SPB at URL <https://www.squirepattonboggs.com/en/general-content/getswift-class-action-getswift-ltd-asx-gsw> an announcement entitled “GetSwift Class Action: GetSwift Ltd (ASX:GSW) – Squire Patton Boggs” (**SPB Announcement**). The SPB Announcement was subsequently updated on 20 February 2018.

10. The SPB Announcement (as updated), which will be relied upon for its full terms, meaning and effect, stated (inter alia) that:
 - a. “On 20 February 2018, Squire Patton Boggs announced a representative proceeding had been issued against GetSwift Limited (GSW) and its director Joel MacDonald under Part IVA of the Federal Court of Australia Act 1976 (Cth) on behalf of Dwayne Perera, and all parties who acquired an interest in fully paid GSW shares between 24 February 2017 and 19 February 2018 (GSW Class Action)”;
 - b. “If you purchased GetSwift shares between 24 February 2017 and 19 January 2018 you can now register your interest to participate in the class action at: GetSwift@squirespb.com or by filling in our online form”;
 - c. “The GSW Class Action alleges misleading and deceptive conduct against the company and Joel MacDonald, and breach of GSW’s continuous disclosure obligations under ASX Listing Rule 3.1 and section 674 of the Corporations Act 2001 (Cth). Squire Patton Boggs estimates that the total claim size may exceed \$300 million”; and
 - d. “Amanda Banton is leading the GSW Class Action. Amanda Banton heads the Asia-Pacific Restructuring & Insolvency team at Squire Patton & Boggs.”
11. The SPB Announcement, prior to being updated, included a statement to the effect that “Squire Patton Boggs estimates that the total claim size may exceed \$300 million”.
12. By reason of the matters in the preceding particulars, Ms Banton and/or SPB represented that:
 - a. the total claim size of the Perera Proceeding may exceed \$300 million (**\$300 Million Claim Representation**); and
 - b. Ms Banton and/or SPB had reasonable grounds for making the \$300 Million Claim Representation (**\$300 Million Claim Reasonable Grounds Representation**).
13. The \$300 Million Claim Representation and/or the \$300 Million Claim Reasonable Grounds Representation (together, the **SPB Representations**) were made in the knowledge and/or the expectation that they were likely to be disseminated including by media reporting.
14. The SPB Representations were repeated by reference to the SPB Announcement or by further representations being made to the same effect by Ms Banton and/or some person acting by or on behalf of SPB in various media including the following:
 - a. On 20 February 2018 the Australian Financial Review published an article entitled “Class Action moved in quickly on GetSwift” available at

- URL: <https://www.afr.com/business/class-action-moves-in-quickly-on-gets-wift-20180219-h0wchs>. That article states: *“Squire Patton Boggs’ Amanda Banton estimated measurable damages could be about \$300 million, and said there might be “more to play out” after the announcement by GetSwift on Monday that 50 per cent of its contracts were still in trial phase”.*
- b. On 20 February 2018 the Sydney Morning Herald published an article entitled “GetSwift and its former AFL playing boss hit with \$300 million claim” available at URL: <https://www.smh.com.au/business/markets/gets-wift-and-its-former-afl-playing-boss-hit-with-300-million-claim-20180220-p4z0yw.html>. Referring to the class action proceedings filed by SPB on 20 February 2018, the article states: *“GetSwift and its former Melbourne Football Club player chief executive Joel Macdonald is facing a class action from shareholders that could cost the logistics software company \$300 million after the company admitted it had not told investors it had lost key contracts.”*
- c. On 20 February 2018, Raskmedia published an article entitled “GetSwift Limited Lost Another 27% Of Its Value Today” available at URL <https://www.raskmedia.com.au/2018/02/20/gets-wift-limited-lost-another-27-value-today/>. That article states: *“Today’s fall may have been accelerated by media reports that law firm Squire Patton Boggs has filed suit in the Federal Court of Australia. Squire Patton Boggs’ lawyer Amanda Banton was quoted as estimating measurable damages could be about \$300 million, which is far larger than Getswift’s current cash balance of around \$96 million (as of its most recently quarterly report). Ms Banton also stated there might be ‘more to play out’ regarding the Getswift situation.”*
- d. On 21 February 2018, Lawyerly published an article entitled “GetSwift hit with \$300M shareholder class action” available at URL <https://lawyerly.com.au/gets-wift-hit-300m-shareholder-class-action/>. That article states: *“Squire Patton Boggs has brought a shareholder class action worth potentially \$300 million against logistics software company GetSwift and its director, former AFL player Joel MacDonald, for providing inadequate disclosures and misleading investors with “overhyped” announcements about business contracts.”*
- e. Further particulars may be provided.
15. Each of the SPB Representations (including as repeated in the media reporting referred to in the particulars above) was a continuing representation, and continued to be maintained by SPB (as the case may be) from the date on which they were made.

Sub-particulars

- A. SPB have not amended, qualified or withdrawn the substance of the SPB Representations and/or the SPB Announcement.
 - B. As at the date of filing, the SPB Announcement remains on the website of SPB.
16. The Statement of Claim and the subsequent Amended Statement of Claim filed in the Perera Proceeding did not quantify the alleged loss and damage caused by the Cross-Claimants to Mr Perera and group members.
17. Ms Banton and/or SPB obtained preliminary expert modelling estimating the value of the claims in the Perera Proceedings to be to be approximately \$75 million (**Expert Estimate**).

Sub-particulars

In this regard, reference is made to:

- A. Confidential Exhibit AKB-4 to the affidavit of Ms Banton filed on 9 April 2018 in the Perera Proceeding;
 - B. Paragraphs 47 to 48 of the affidavit of Ms Banton filed on 9 April 2018 in the Perera Proceeding;
 - C. Confidential Exhibit AKB-5 to the affidavit of Ms Banton filed on 10 April 2018 in the Perera Proceeding; and
 - D. Paragraph 5 to the affidavit of Ms Banton filed on 10 April 2018 in the Perera Proceeding.
18. From about 13 April 2018, at a case management hearing held for the Perera Proceeding (and another proceeding) and in the further case management of that proceeding (and other proceedings), Mr Perera:
- a. asserted that the value of the claims in the Perera Proceedings were approximately \$75 million; and
 - b. disclaimed that the true value of the claims in the Perera Proceedings was \$300 million,

Sub-particulars

In this regard, reference is made to (without limitation):

- A. the following statements and admissions were made by Counsel for Mr Perera, who was instructed at the time by Ms Banton, at the case management hearing on 13 April 2018 in proceeding numbers NSD226/2018, NSD440/2018 and NSD580/2018:
 - I. “[Counsel for Perera]: ... that’s why we have a model in our evidence which actually has a considered, albeit preliminary,

assessment of what the real value of the open-class claims are here, why we're not just plucking out random settlement amounts of 100 or 75 million dollars" (T70.8-10)

II. "HIS HONOUR: Where did the figure of 300 million come from?"

[Counsel for Perera]: That was something that was said by Ms Banton – or attributed to Ms Banton, in any event, in a newspaper article." (T70.12-15);

III. "[Counsel for Perera]: Now, there's no evidence about whether or not that was in fact an accurate record. The point is that the – I mean, the press likes to exaggerate these things, but that, of course, was before the data was –

HIS HONOUR: I see.

[Counsel for Perera]: - - - collected, which enabled - - -

HIS HONOUR: Some precision." (T70.19-27)

IV. "[Counsel for Perera]... So I'm not standing here today and saying this is a \$300 million claim." (T70,29-30)

B. In *Perera v GetSwift Limited* [2018] FCA 732 at [289] it is stated: "...in this case, the representatives of Mr Perera initially estimated that the likely damages range was up to \$300 million (although this figure was disavowed during the course of oral submissions)".

C. The tender of the Expert Estimate.

D. Paragraph 8 of Ms Banton's affidavit dated 20 April 2018 filed in the Perera Proceeding, where Ms Banton deposes that "I have put in an additional column at the beginning of MFI5 which expresses the settlement sum as a percentage of the realistic Perera estimated damages prepared by FTI being approximately \$75m".

E. Further particulars may be provided following pre-trial procedures.

19. The matters referred to in sub-paragraph (18) to the particulars above were conveyed by submissions by counsel instructed at the time by SPB and evidence tendered, obtained or prepared by SPB or by counsel instructed at the time by SPB, and at no time was any further correcting submission made or evidence adduced by SPB or by counsel on instructions from SPB.
20. The total claim size of the Perera Proceeding (assuming liability could be established) did not and could not exceed \$300 million.
21. Further or in the alternative, the only expert modelling obtained by SPB indicated that the total claim size of the Perera Proceeding (assuming liability could be established) was:

- a. approximately \$75 million;
 - b. by implication, not in the vicinity of \$300 million.
22. Further, at all material times, Ms Banton and/or SPB knew or ought reasonably to have known, each of Mr Macdonald and Mr Hunter would not participate as a group member in any representative proceeding commenced against GetSwift by reason of their positions at GetSwift.
23. Given the movement in prices of GetSwift Shares over time (with or without regard to the matters referred to in sub-paragraph (18) to the particulars above), on no reasonable basis could the total claim size of the Perera Proceeding (assuming liability could be established) be estimated to be in the vicinity of \$300 million.
24. Ms Banton and/or SPB had no reasonable grounds for making the \$300 Million Claim Representation.
25. By making each of the \$300 Million Claim Representation and \$300 Million Claim Reasonable Grounds Representation, Ms Banton and/or SPB engaged in conduct:
- a. in relation to a financial product or a financial service within the meaning of s 1041H of the Corporations Act;
 - b. in trade or commerce in relation to financial services within the meaning of s 12DA of the ASIC Act; and/or
 - c. in trade or commerce within the meaning of s 18 of the ACL.
26. In the circumstances set out above, Ms Banton and/or SPB engaged in conduct which was misleading or deceptive by:
- a. making the SPB Representations;
 - b. repeating the SPB Representations; and
 - c. failing to correct or qualify the SPB Representations.
27. By reason of the matters set out above, Ms Banton and/or SPB contravened:
- a. s 1041H of the Corporations Act;
 - b. s 12DA of the ASIC Act; and/or
 - c. s 18 of the ACL.
28. Following the publication of the SPB Announcement, and by reason of the contraventions referred to in subparagraph (27) to the particulars above (**SPB Contraventions**), GetSwift Shares declined in price and value.

29. In the premises, the loss or damage suffered by the Applicant and/or Group Members as pleaded in the SOC (if liability is established) also arose by reason of the SPB Contraventions.
30. Further particulars may be provided following pre-trial procedures.
- (c) the Respondents' liability (if any) to the Applicant or Group Members is, by that reason, limited by s 1041N of the Corporations Act, s 12GR of the ASIC Act, s 87CD(1) of the Competition and Consumer Act, s 35 of the CLA and the corresponding provisions in the legislation of the other States and Territories, to an amount reflecting that proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Respondents' responsibility for that damage or loss.
462. In the premises, pursuant to s 1041N of the Corporations Act, s 12GR of the ASIC Act, s 87CD of the Competition and Consumer Act, section 35 of the CLA and the corresponding provisions in the legislation of the other States and Territories (as the case may be), any liability of the Respondents to the Applicant in respect of loss or damage alleged in the SOC (which liability is denied) should be limited to an amount reflecting that proportion of the loss or damage claimed that the Court considers just having regard to the extent of the responsibility of the Respondent for that loss or damage.

DD. FURTHER DEFENCE

463. Further, or in the alternative, the Respondents say that if they are liable by reason of the claims against them based on alleged contraventions of s 674 of the Corporations Act (which is denied), then they acted honestly and having regard to all the circumstances of the case, ought fairly to be excused from any such liability (in whole, or in the alternative, in part) pursuant to s 1317S of the Corporations Act.
464. Further, or in the alternative, the Second Respondent says that if he is liable by reason of the claims alleged against him (which is denied), then he acted honestly and having regard to all the circumstances of the case, ought fairly to be excused from any such liability (in whole, or in the alternative, in part) pursuant to s 1318 of the Corporations Act.

Date: 5 February 2019



Signed by Michelle Fox
Lawyer for the Respondents

This pleading was prepared and settled by M J Darke SC and A Shearer of Counsel.

Amendments to this pleading were prepared by Quinn Emanuel and settled by A Shearer of Counsel.

Certificate of lawyer

I, Michelle Fox certify to the Court that, in relation to the defence filed on behalf of the Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 5 February 2019



Signed by Michelle Fox
Lawyer for the Respondents