

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 15/06/2018 12:30:56 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 15/06/2018 12:42:58 PM AEST

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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 Originating application starting a representative proceeding
under Part IVA of the *Federal Court of Australia Act 1976***

No. NSD 580 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

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia
Law Courts Building, Queens Square
Sydney VIC 2000

Date & Time:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of	Raffaele Webb, Applicant
Prepared by	Timothy Mark Luke Finney
Law firm	Phi Finney McDonald
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Details of claim

On the grounds stated in the accompanying Statement of Claim affidavit, the Applicant claims for himself and the Group Members:

1. a declaration that the Respondents contravened section 1041E and section 1041H(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and/or section 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and/or section 18 of the *Australian Consumer Law* (**ACL**) by;

(a) making one or more or any of:

- i. the Fruit Box Group Representations;
- ii. the Fruit Box Group Macdonald Representations;
- iii. the April 2017 CBA Representations;
- iv. the April 2017 CBA Macdonald Representations;
- v. the Lone Star Grill Representations;
- vi. the Lone Star Grill Macdonald Representations;
- vii. the Pizza Hut Representations;
- viii. the Pizza Hut Macdonald Representations;
- ix. the April Appendix 4C Representations;
- x. the April Appendix 4C Macdonald Representations;
- xi. the All Purpose Transport Representations;
- xii. the All Purpose Transport Macdonald Representations;
- xiii. the CITO Representations;
- xiv. the CITO Macdonald Representations;
- xv. the Hungry Harvest Representations;
- xvi. the Hungry Harvest Macdonald Representations;
- xvii. the FRF Couriers Representation;
- xviii. the FRF Couriers Macdonald Representation;
- xix. the Tranche 1 Cleansing Notice Representation;
- xx. the Takeaway.com Representations;



- xxi. the Takeaway.com Macdonald Representations;
- xxii. the Tranche 2 Cleansing Notice Representation;
- xxiii. the Fantastic Furniture Representations;
- xxiv. the Fantastic Furniture Macdonald Representations;
- xxv. the Bare Burger Representations;
- xxvi. the Bare Burger Macdonald Representations;
- xxvii. the N A Williams Representations;
- xxviii. the N A Williams Macdonald Representations;
- xxix. the Johnny Rockets Representations;
- xxx. the Johnny Rockets Macdonald Representations;
- xxxi. the October Appendix 4C Representation;
- xxxii. the October Appendix 4C Macdonald Representation;
- xxxiii. the Yum! Brands Representations;
- xxxiv. the Yum! Brands Macdonald Representation;
- xxxv. the Amazon Representation;
- xxxvi. the Amazon Macdonald Representation;
- xxxvii. the December 2017 CBA Representations;
- xxxviii. the December 2017 CBA Macdonald Representations;
- xxxix. the Toast Representation;
- xl. the Toast Macdonald Representation;

- 4.2. damages pursuant to section 1041I(1) of the Corporations Act and/or section 12GF(1) of the ASIC Act and/or section 236 of the ACL on behalf of the Applicants and the group members, for loss suffered by reason of the Respondents' contraventions referred to in the paragraph immediately preceding;
3. a declaration pursuant to section 1317E(1) of the Corporations Act that the First Respondent contravened section 674(2) of the Corporations Act and ASX Listing Rule 3.1 by failing to notify the Australian Securities Exchange (ASX) of;
- (a) one or more or any of:
- i. the Fruit Box Information;



- ii. the All Purpose Transport Information;
- iii. the CITO Information;
- iv. the Fantastic Furniture Information;
- v. the Client Contract Information;

2.4. a declaration that the Second Respondent was ~~knowingly concerned in, and thereby was~~ involved in the First Respondent's contraventions of section 674 of the Corporations Act as set out in paragraph 3, and thereby contravened section 674(2A) of the Corporations Act;

3.5. an order pursuant to section 1317HA(1) of the Corporations Act that the Respondents compensate the Applicants and the group members for the loss or damage suffered by them as a result of the First and Second Respondents' contraventions of section 674(2) and/or 674(2A) of the Corporations Act respectively.

4.6. Interest.

5.7. Costs.

6.8. Such further or other relief as the Court may deem appropriate.

Questions common to claims of group members

1. The questions of law or fact common to the claims of the Applicant and Group Members are: ~~as described in the accompanying affidavit.~~

(a) whether, during the period between 24 February 2017 to 19 January 2018, the First Respondent made:

- i. the Fruit Box Representations;
- ii. the April 2017 CBA Representations;
- iii. the Lone Star Grill Representations;
- iv. the Pizza Hut Representations;
- v. the April Appendix 4C Representations;
- vi. the All Purpose Transport Representations;
- vii. the CITO Representations;



- viii. the Hungry Harvest Representations;
- ix. the FRF Couriers Representations;
- x. the Takeaway.com Representations;
- xi. the Tranche 1 Cleansing Notice Representations;
- xii. the Tranche 2 Cleansing Notice Representations;
- xiii. the Fantastic Furniture Representations;
- xiv. the Bare Burger Representations;
- xv. the N A Williams Representations;
- xvi. the Johnny Rockets Representations;
- xvii. the October Appendix 4C Representation;
- xviii. the Yum! Brands Representations;
- xix. the Amazon Representations;
- xx. the December 2017 Representations; and
- xxi. the Toast Representations,

(together, **GetSwift Representations**);

- (b) whether the making of any or all the GetSwift Representations constituted conduct:
 - i. in relation to a financial product for the purposes of section 1041H of the Corporations Act;
 - ii. in relation to a financial service for the purposes of section 12DA of the ASIC Act; and
 - iii. in trade or commerce for the purposes of section 12DA of the ASIC Act and/or section 18 of the ACL.
- (c) whether the GetSwift Representations were misleading or deceptive or likely to mislead or deceive in contravention of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act and/or section 18 of the ACL;



(d) whether, during the period between 24 February 2017 to 19 January 2018, the

Second Respondent made:

- i. the Fruit Box Macdonald Representations;
- ii. the April 2017 CBA Macdonald Representations;
- iii. the Lone Star Grill Macdonald Representations;
- iv. the Pizza Hut Macdonald Representations;
- v. the April Appendix 4C Macdonald Representations;
- vi. the All Purpose Transport Macdonald Representations;
- vii. the CITO Macdonald Representations;
- viii. the Hungry Harvest Macdonald Representations;
- ix. the FRF Couriers Macdonald Representations;
- x. the Takeaway.com Macdonald Representations;
- xi. the Fantastic Furniture Macdonald Representations;
- xii. the Bare Burger Macdonald Representations;
- xiii. the N A Williams Macdonald Representations;
- xiv. the Johnny Rockets Macdonald Representations;
- xv. the October Appendix 4C Macdonald Representation;
- xvi. the Yum! Brands Macdonald Representations;
- xvii. the Amazon Macdonald Representations;
- xviii. the December 2017 Macdonald Representations; and
- xix. the Toast Macdonald Representations,

(together, **Macdonald Representations**);

(e) whether the making of any or all the Macdonald Representations constituted
conduct:



- i. in relation to a financial product for the purposes of section 1041H of the Corporations Act;
 - ii. in relation to a financial service for the purposes of section 12DA of the ASIC Act; and
 - iii. in trade or commerce for the purposes of section 12DA of the ASIC Act and/or section 18 of the ACL.
- (f) whether the Macdonald Representations were misleading or deceptive or likely to mislead or deceive in contravention of section 1041H of the Corporations Act and/or section 12DA of the ASIC Act and/or section 18 of the ACL;
- (g) whether:
- i. the Fruit Box Announcement;
 - ii. the April 2017 CBA Announcement;
 - iii. the Lone Star Grill Announcement;
 - iv. the Pizza Hut Announcement;
 - v. the April Appendix 4C Announcement;
 - vi. the All Purpose Transport Announcement;
 - vii. the CITO Announcement;
 - viii. the Hungry Harvest Announcement;
 - ix. the FRF Couriers Announcement;
 - x. the Takeaway.com Announcement;
 - xi. the Tranche 1 Cleansing Notice Announcement;
 - xii. the Fantastic Furniture Announcement;
 - xiii. the Bare Burger Announcement;
 - xiv. the N A Williams Announcement;
 - xv. the Johnny Rockets Announcement;



xvi. the October Appendix 4C Announcement;

xvii. the Yum! Brands Announcement;

xviii. the Amazon Announcement;

xix. the December 2017 Announcement; and

xx. the Toast Announcement,

(together **Announcements**);

were:

xxi. false in a material particular, or materially misleading;

xxii. likely to induce persons to apply for or acquire financial products; and

xxiii. known by, or reasonably ought to have been known by, the First Respondent to be false in a material particular and further, or in the alternative, materially misleading, in contravention of section 1041E(2) of the Corporations Act;

xxiv. known by, or reasonably ought to have been known by, the Second Respondent to be false in a material particular and further, or in the alternative, materially misleading, in contravention of section 1041E(2) of the Corporations Act;

(h) whether the making of the Representations caused the First Respondent's share price to be higher during the Claim Period than it would have been had they not been made and, if so, to what extent or by what amount;

(i) whether the Applicant and the Group Members are persons who suffered loss or damage by the First Respondent and the Second Respondent's contraventions of section 1041H of the Corporations Act, and/or section 1041E of the Corporations Act and/or section 12DA of the ASIC Act, and/or section 18 of the ACL and, if so, what is the proper method of assessment of that loss and damage;

(j) whether the First Respondent was aware, for the purposes of ASX Listing Rules 3.1 and 19.12, and, if so, when, of:

i. the Fruit Box Group Information;

ii. the All Purpose Transport Information;



iii. the CITO Information;

iv. the Fantastic Furniture Information;

v. the Client Contract Information,

(together **Material information**);

(k) whether any or all of the Material Information was:

i. information that a reasonable person would expect to have a material effect on the price or value of the First Respondent's shares within the meaning of ASX Listing Rule 3.1 and section 674(2)(c)(ii) of the Corporations Act; and

ii. not generally available within the meaning of section 676 of the Corporations Act;

(l) whether the First Respondent contravened section 674(2) of the Corporations Act by failing to disclose any or all of the Material Information as soon as it was aware of that information;

(m) if any contraventions by the First Respondent of section 674(2) of the Corporations Act are established, whether the Second Respondent was involved in those contraventions and thereby contravened section 674(2A) of the Corporations Act;

(n) whether the failure to disclose any or all of the Material Information as soon as the First Respondent was aware of that information caused the First Respondent's share price to be higher during any part of the Claim Period than it would have been had those matters been disclosed as soon as the Respondent was aware of them and, if so, to what extent or by what amount; and

(o) whether the group members are persons who suffered loss and damage as a result of the First Respondent's contraventions of section 674(2) of the Corporations Act and the Second Respondent's contraventions of section 674(2A) of the Corporations Act, and, if so, what is the proper method of assessment of that loss or damage.

Representative action

1. The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. The group members to whom this proceeding relates are those persons who:



- (a) acquired an interest in fully paid ordinary shares in the First Respondent (SetSwift Limited, GSW.AX) during the period from 24 February 2017 until the close of trading on 19 January 2018 inclusive;
- (b) suffered loss and damage by or resulting from the contravening conduct of the Respondents as described in the Statement of Claim accompanying affidavit; and
- (c) are not:
- i. directors or officers or a close associate (as defined in section 9 of the *Corporations Act*) of the First Respondent; or
 - ii. a related party (as defined in section 228 of the *Corporations Act*) of the First Respondent; or
 - iii. a related body corporate (as defined in section 50 of the *Corporations Act*) of the First Respondent; or
 - iv. an associated entity (as defined in s 50AAA of the *Corporations Act*) of the First Respondent; or
 - v. a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

Applicant's address

The Applicant's address for service is: Phi Finney McDonald
Level 35, 600 Bourke Street
Melbourne VIC 3000

Email: tim.finney@phifinneymcdonald.com

The Applicant's address is: c/- Phi Finney McDonald
Level 35, 600 Bourke Street
Melbourne VIC 3000



Service on the Respondents

It is intended to serve this application on the Respondents.

Date: 15 June 2018

A handwritten signature in black ink, appearing to read "Timothy Mark Luke Finney".

Signed by Timothy Mark Luke Finney
Lawyer for the Applicant